

Robert Schuman Centre

The New European Agencies
Conference Report

ALEXANDER KREHER
(EDITOR)

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ROBERT SCHUMAN CENTRE

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Kreher (ed.): *The New European Agencies
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The Robert Schuman Centre was set up by the High Council of the EUI in 1997 to carry out disciplinary and interdisciplinary research in the areas of European integration and public policy in Europe. While developing its own research projects, the Centre also collaborates with the Government of the Institute and supports the specialized working groups organised by the researchers.

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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE

The New European Agencies
Conference Report

ALEXANDER KREHER
(Editor)

The Conference on *The New European Agencies* was held at the EUI
on 1-2 March 1996 and directed by Yves Mény and Giandomenico Majone

EUI Working Paper RSC No. 96/49

BADIA FIESOLANA, SAN DOMENICO (FI)

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The New European Agencies
Conference Report
ALEXANDER KREHER
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Introduction

This Conference Report contains a synopsis of a conference on the *The New European Agencies* held on 1-2 March 1996 by the Robert Schuman Centre (RSC) of the European University Institute (EUI) in Florence. The objective of the report is to disseminate to a wider audience the presentations made at the conference and the conclusions reached. It also aims to prepare the way for further research. Three papers presented at the conference are published individually in the RSC working paper series.¹

The idea to study the establishment of new agencies in the EC first arose within the Robert Schuman Centre at the EUI as early as Autumn 1993, right after the Heads of State and Government of the European Union decided on the location of the seats of certain bodies and departments of the European Communities.² This research project on the *European Agencies* is linked both to various long-term RSC research programmes (for example, on *EU Regulatory Policy Making*) as well as to specific RSC research projects (for example, *Reform of the European Institutions*,³ *EU Competition Policy*,⁴ *Integrating Scientific Expertise into Regulatory Decision-Making*⁵) which have been conducted in the form of conferences, round tables or workshops.

The project on the new European Agencies is based not only on pure academic interest, but also on practical questions, such as how the heads of the agencies launched their organisations and how the already existing Community institutions complement the creation of these new EC agencies. Furthermore, we assume that the establishment of new EC agencies in various policy areas will be an ongoing process, and therefore a comparative and inductive approach is necessary to correctly understand their function within the Community's political system.

¹Karl-Heinz Ladeur, *The European Environment Agency and Prospects for a European Network of Environmental Administrations*. EUI Working Paper, Robert Schuman Centre No. 96/50.

Rod Rhodes, *Reinventing Whitehall: the Agency Experiment*. EUI Working Paper, Robert Schuman Centre No. 96/51.

Martin Shapiro, *Independent Agencies: US and EU*. Jean Monnet Chair Papers No. 34, Robert Schuman Centre, EUI.

²OJ C323, 30 November 1993, p. 1.

³Club de Florence: *Europe: L'impossible Statu Quo*, Paris, Stock, 1996.

⁴A workshop on *The Implementation of Antitrust Rules in a "Federal" Context* was organised by Prof. Claus-Dieter Ehlermann at the European University Institute on 19-20 April 1996.

⁵The workshop on *Integrating Scientific Expertise into Regulatory Decision-Making* was organised by Christian Joerges and Karl-Heinz Ladeur at the European University Institute on 5-7 October 1995. The contributions to this workshop are published in the EUI Working Paper RSC No. 96/5-11.

The main focus of this conference was on three aspects: first, the conference explored the politics of institutional design and examined institutional development to date; second, it focused on reasons for establishing agencies in other jurisdictions, such as in Germany, Italy, the United Kingdom and the United States, and the respective experience of these organisations, and; third it focused on future prospects and the consequences that may flow from the establishment of EC agencies. The participants of this conference reflected different approaches as might have been expected given their diverse backgrounds. They included: academic experts, some working on the European Union and others on the agency model in different national contexts; EC representatives from the European Parliament, the Commission and the Council, as well as the Heads of five of the new EC agencies.

Clearly, this conference took place at an early stage in the development of the agencies. Some of the eight new agencies were still not operational; the Office of Harmonisation, for example, was opened one month after this conference. Nevertheless, the willingness of those invited to participate and their contributions and general discussions clearly demonstrated that, even at this stage, an exchange of ideas and experiences is not only useful but also critical to the future development of the agencies. It has also allowed the RSC and researchers at the EUI to study this new development right from its inception.

As financial constraints restricted the number of participants, delegates from only five agencies could be invited. These five⁶ were chosen because of a conviction that these particular agencies represent a good example of the range of different functions that the present ten agencies⁷ are supposed to fulfill. The RSC also greatly appreciated the participation of each of the main Community institutions, with opinions being provided by the Budget Rapporteur of the EP for the 1997 financial year, the Secretariat General of the Commission, and the Legal Service of the Secretariat of the Council.

Overall, the key to the success of the conference, as a number of participants remarked, was not only that it brought together experts from various fields, but also that it helped to foster communication, clear-up

⁶ The European Monitoring Centre for Drugs and Drug Addiction, Lisbon; the European Agency for the Evaluation of Medicinal Products, London; the European Training Foundation, Turin; the European Environment Agency, Copenhagen; the Office for Harmonisation in the Internal Market (Trade Marks and Design), Alicante.

⁷ The other five are: the European Agency for Safety and Health at Work, Bilbao; the Translation Centre for bodies of the European Union, Luxembourg; the Community Plant Variety Office, no site yet found; European Centre for the Development of Vocational Training, Thessaloniki (formerly in Berlin).

misunderstandings and misconceptions and elaborate the present situation, as well as enabling representatives to discuss future actions. The Conference organisers at the RSC were very pleased that the participants found that this conference on *The New European Agencies* achieved its objectives.

This Conference Report is divided into four parts. It begins with the opening paper by Professor Giandomenico Majone, who presented some general questions which resurfaced throughout the various sessions of the conference. While this paper focuses in particular on agencies having mainly an information function, it also emphasises that debates on European agencies should not rely only on the distinction between providing information and making policy, but must also pay attention to issues of independence, accountability, credibility and networking.

The second part of the report comprises the presentations by the Heads of Agencies and Community institution representatives. All five agency directors were asked to begin with a description of the initial idea to create each respective agency, and to go on to address the various interests of the actors involved, and to highlight legal and political obstacles to achieving their objectives. After this focus on policy design, the directors were asked then to describe the subsequent launching of the agencies, through implementation of the provisions of the respective regulations establishing their agency. Additionally, they were asked to outline the difficulties the agencies had encountered at their inception, potential constraints, as well as future perspectives. The presentations by the Agency Heads are followed by the statements made by the representatives from the EP, the Commission and the Council, who were asked to give their individual perspectives on the creation period, with a particular emphasis on their experiences with and future lines of development concerning the new EC agencies.

The third part of this Conference Report comprises case studies on national experiences with respect to agencies in Italy, Germany, and the US.⁸ The speakers first address the reasons for establishing agencies and the problems that were encountered along the way, and they then discuss their relevance to the European venture. Each speaker was asked to focus on a particular issue. In the German case, the difficulties of establishing a body, that falls between a scientific and administrative body were examined; in the Italian case, the relationship between agencies, political parties and the parliament was addressed; in the British case, the issue of accountability was explored; and in the US case, the issue of coordinating a number of agencies was considered.

The fourth part provides a conference synopsis in which the various contributions are partly compared and which considers a number of key points raised during the conference discussions. The summary points to the need for

⁸ The contribution by Professor Rod Rhodes on executive agencies in the UK is published as a separate Robert Schuman Centre working paper (see footnote 1).

additional research on EC agencies. The annexes comprise the list of contributors as well as the programme of the conference.

Opening Paper

NEW AGENCIES IN THE EC: REGULATION BY INFORMATION

Giandomenico MAJONE

1. The Main Thesis

It hardly needs repeating that public policy is increasingly dependent on relevant, timely and especially credible information. This is particularly true in the area of economic and social regulation where the policy-maker is often faced with problems at the frontier of scientific and technical knowledge. The main thesis of this paper goes beyond this obvious observation, to claim that the role of information in contemporary policy-making is not only instrumental but also constitutive. In other words, information is not only a necessary input into the policy process; under some conditions, information constitutes policy. In this sense I speak of "regulation by information": meaning that the provision of information and evidence may be usefully seen as a mode of regulation - alternative to other more coercive modes - rather than merely as a prerequisite for sound regulatory decisions.

2. Coercion vs Policy Credibility: the Big Trade-Off

The claim that information may in itself constitute policy rather than being merely instrumental, sounds odd only because we are accustomed to see in the legitimate use of coercion the essential characteristic of governmental activity. In the words of Theodore Lowi, "while governments can rarely if ever perform any function that a nongovernmental institution cannot also perform, governmentalisation of a function - that is passing a public policy - is sought because the legitimacy of its sanctions makes its social controls more surely effective". Before examining in more detail the constitutive function of information, I shall indicate why the traditional view of policy-making as been ultimately based on coercion, no longer corresponds to the reality of policy making in the contemporary world. Increasing interdependence and policy complexity are changing the nature of the trade-off between coercion and credibility in favour of the latter.

3. The Changing Nature of Policy-Making

Several factors are slowly but surely changing the nature of policy-making at the national, supranational and international levels.

First, growing economic, financial, ecological and political interdependence among nations has the effect of weakening the impact of policy actions on the home country, while potentially strengthening their impact on other countries. National policy is increasingly projected outside the national border, but it can achieve its objectives there only if it is credible. As already suggested, at the national level, there is (or at least there used to be) a trade-off between coercion and credibility: even a nearly worthless currency can be made a legal tender by legislative fiat, but, of course, only inside national borders. Similarly, a policy lacking credibility may, up to a point, be enforced by coercive means, but, again, only domestically and only at the price of a significant increase in the costs of implementation. This increased openness of the national border changes the nature of the trade-off by making it impossible or very costly to use coercive power as a substitute for policy credibility.

Second, the growing complexity of public policy continues to erode the effectiveness of the traditional command-and-control techniques of government bureaucracy. Until fairly recently, most of the tasks undertaken by national governments were simple enough to be organised along classical bureaucratic lines. Once a programme was enacted, the details of its operations could be formulated and appropriate commands issued by highly centralised command centres. In contrast, the single most important characteristic of the newer form of economic and social regulation is that its success depends on affecting the attitudes, expectations, consumption habits or production patterns of millions of individuals and hundreds of thousands of firms and local units of government. The tasks are difficult not only because they deal with technologically complicated matters but even more because they aim ultimately at modifying individual behaviour. In this situation, information and persuasion become essential resources of policy-makers.

4. Insights from Policy Analysis

Much recent research on the dynamics of policy-making recognizes the constitutive role of information and analysis. Objective conditions are seldom so compelling and so unambiguous that they set the policy agenda or dictate the appropriate conceptualization. For example, in the 1950's, the issue of poverty was a minor one in the American public consciousness. In the 1960's, with little

change in the actual distribution of income, it became a significant part of public policies. What had changed were attitudes and views on poverty, and beliefs in the capacity of government to find solutions to social problems. A similar example is provided by the pollution control laws of the early 1970's. This legislation was significantly influenced by a theory of "agency capture", according to which vague statutory language was a cause of the capture of regulatory agencies by business. The proposed remedy was statutes that have clear goals, set fixed deadlines for achieving them, and empower citizen groups to take slow-moving agencies to court. The final result of the combined efforts of researchers and activists was a radical resetting of norms relating to environmental and health protection.

In sum, one of the major insights of recent policy research is that public problems are "socially constructed" rather than objectively given. This is not to say that policy is determined by cognitive factors rather than by interests. The point is, rather, that interests are revealed in the process of translating an issue into a policy problem.

5. Information and Soft Law

The parallel between regulation by information and "soft law" is particularly instructive. The tertiary rules on "soft law" of the EU are increasingly important and appear in a number of guises: resolutions, declarations, action programmes, deliberations, memoranda, guidelines and so on. Soft law provisions may not be directly effective but they can give rise to indirect legal effects. Even where soft law lacks legal effects, items such as resolutions and recommendations can make a subject a matter of Community concern and hence may remove it from the domestic jurisdiction of the member states (see, for example, the ERTA case).

Just as information may represent a non-coercive mode of regulation, so Community soft law offers a less formal alternative to regulations, directives and decisions and may prove particularly attractive where there is resistance to secondary legislation. It may indeed be the case, as Robert Baldwin has observed, that informal Community action proves feasible where secondary legislation would be politically impossible. Even when this is not the case, the use of soft law may still be advisable in order to offer member states a higher level of flexibility in implementation than would be offered even by a directive. The following historical example provides additional insights into the philosophy of regulation by publication.

6. The American "Sunshine Commission"

The American regulatory state is best known abroad for its powerful regulatory bodies - the independent regulatory commission (IRCs) - but in US administrative history one can find also a weaker version, termed "sunshine commission" because of its reliance on what McGraw has called "regulation by publication", that is, on disclosure and public information. The outstanding example is the Massachusetts Board of Railroad Commissioners created in 1869.

This commission issued no orders that the regulated industry was legally bound to obey, except for orders to produce information. Sometimes the board also specified the form the information had to take. For example, the agency often required railroads to submit data in standard accounting forms that would facilitate comparative statistical analysis of different companies.

The informal approach to regulation followed by the Massachusetts Board amounted to a reversal of the state's traditional railroad policy, which had produced a number of stringent laws that everyone then ignored. The Board, by foregoing the role of adversary, avoided the embarrassing impotence of early statutory regulations and also avoided the troublesome question of constitutionality in the delegation of legislative power to agency discretion. Charles F. Adams, the first chairman of the Board, was convinced that in some cases "regulation by publication" was a sufficient form of control; in others, it was preferable to badly designed or poorly implemented statutory regulation or to forms of self-regulation not sufficiently open to public scrutiny.

The model of the sunshine commission was rejected by an increasingly interventionist federal government, but it is interesting to note that some of the most successful regulatory bodies rely, at least to some extent, on "regulation by publication". The best example is the Securities and Exchange Commission (SEC). Nearly all American business executives are familiar with the commission because of the reporting requirements it enforces. These include the public disclosure of detailed information about their companies as well as their own salaries and perquisites. Recently, American firms have also been required to inform the SEC about prospective environmental liabilities, for example, for cleaning up contaminated land.

7. Independence and Credibility

Information can affect expectations and behaviour only if it is credible. As noted above, the ability to make credible policy commitments grows in

importance in direct proportion to the difficulty of enforcing policy by coercive means. However, credibility is problematic for elected politicians and for bureaucratic agencies under their direct control. In part, this is because, in a democracy, political executives tend to have shorter time horizons than their counterparts in the private sector, so the efficacy of reputational mechanisms is more limited in the political sphere. Moreover, a legislature cannot bind a subsequent legislature and a majority coalition cannot bind another so that public policies are always vulnerable to reneging and hence lack credibility.

One important way of solving the credibility problem is to delegate policy-making powers to some independent body. In fact, the recent willingness of politicians to delegate regulatory powers to agencies distinct from government itself is best understood as a means whereby governments can commit themselves to regulatory strategies that would not be credible in the absence of such delegation. As I have argued elsewhere, also the massive transfer of regulatory powers to the European institutions can be explained in the same way: inter-governmental agreements lack credibility because it is difficult for the parties concerned to know whether or not the agreements are properly kept.

8. Networking

Delegation may not be sufficient to ensure credibility. If politicians can violate agency independence with impunity, the national and international credibility of the agency remains open to doubt. Therefore additional mechanisms may be needed to strengthen the resolve of the agency to defend its own independence. Networking is one such mechanism. An agency which sees itself as part of an international network of institutions pursuing similar objectives and facing analogous problems, rather than as a new and often marginal addition to a huge central bureaucracy, is more motivated to resist political pressures. This is because the agency executives have an incentive to maintain their reputation in the eyes of their counterparts in other countries. A politically motivated decision would compromise their international credibility and make cooperation more difficult to achieve in the future.

Professional associations of regulators working in the same policy area have been in existence for many decades in the United States and Canada. Regulatory networks are beginning to develop also at the international level, for example, the International Organisation of Securities Commissions (IOSCO). In the European Union, the Commission's Competition Directorate has recently initiated a decentralisation project with the long-term goal of having one EC

competition statute applied throughout the EU by a network including DG IV itself, national competition authorities, and national courts.

There is no reason why the network model could not be extended to other areas of economic and social regulation, and indeed to all activities where mutual trust and reputation are the key to greater effectiveness. An example is the emerging pattern of coordinated partnership between Eurostat and the national statistical offices of the member states.

A high level of professionalisation is crucial to the viability of the network model. Professionals are oriented by goals, standards of conduct, cognitive beliefs, and career opportunities that derive from their professional community, giving them strong reasons for resisting interference and directions from political outsiders.

9. Agency Independence and Accountability

A basic principal of democratic theory is that governmental policy ought to be subject to control only by persons accountable to the electorate. Independent agencies seem to violate this principle. The technocrats who head such agencies are appointed, not elected, officials, yet they yield considerable power. How is the exercise of that power to be democratically controlled?

The tendency to assume that independence and accountability are mutually exclusive is largely due to the conventional view of control as "self-conscious oversight, on the basis of authority, by defined individuals or offices endowed with formal rights or duties to inquire, call for changes in behaviour and to punish". For the highly technical and discretionary activities delegated to independent agencies, a more appropriate notion of control is one which Christopher Hood has called "interpolable balance": a view of control that takes as its starting point a need to identify self-policing mechanisms which are already present in the system, and can contemplate a network of complementary and overlapping checking mechanisms instead of assuming that control is necessarily to be exercised from any fixed place in the system.

In other words, expert independent agencies can be monitored and kept democratically accountable only by a combination of control instruments: clear and limited objectives; reason-giving requirements; professional principals and peer review; judicial review (where appropriate) and public participation (again, where appropriate). Legislative and executive oversight are not, of course, excluded, but any attempt to "micro-manage" the agency by the political

authorities should be firmly resisted. When such a multi-pronged system of controls works properly, no one controls the agency, yet the agency is "under control".

10. Conclusions

I have argued that "regulation by information" should be viewed as an alternative, and in some respects more promising, mode of regulation than the traditional command-and-control approach. The intellectual challenge is to determine the optimal mix of "soft" and "hard" regulatory instruments.

If this view is correct, then the current debate about the new European agencies is misleading to the extent that it relies on an artificial, and by now outdated, distinction between providing information and making policy.

I have emphasised that information can affect expectations and trigger concrete regulatory measures only if it is credible. Independence is necessary to ensure credibility, but it raises serious issues of democratic accountability. In turn, independence and accountability may be reconciled only if we move beyond traditional, one-dimensional views of control. The future of regulation by information, and hence of the European agencies, will depend, at least in part, on the answers we are able to provide to these closely inter-related questions.

PART I : THE EMERGENCE OF EC AGENCIES AND THEIR FUNCTIONNING

A. Presentations by the Heads of Agencies

1. George Estievenart, The European Monitoring Centre for Drugs and Drug Addiction, Lisbon
2. Fernand Sauer, The European Agency for the Evaluation of Medicinal Products, London
3. Domingo Jimenez-Beltran, The European Environment Agency, Copenhagen
4. Peter de Rooij, The European Training Foundation, Turin
5. Jean-Claude Combaldieu, The Office for Harmonisation of the Internal Market, Alicante

B. Statements by Representatives of the European Union Institutions

1. Niels Ahrendt, Secretariat-General, European Commission
2. Antonio Sacchetti, Directeur au Service juridique du Conseil
3. Laurens Jan Brinkhorst, Member of the European Parliament, General Rapporteur for the 1997 Budget

L'OBSERVATOIRE EUROPEEN DES DROGUES ET DES TOXICOMANIES

Georges ESTIEVENART, Directeur

Mesdames et Messieurs, dans le temps qui m'est prêté, je vais essayer effectivement de vous tracer en contrepoint l'évolution de la mise en place de cet Observatoire européen des drogues et des toxicomanies, en suivant la démarche qui nous a été proposée, en trois parties: d'abord essayer de rappeler les raisons qui ont conduit à la création de cette agence communautaire; ensuite, les problèmes et les objectifs de sa mise en marche et de sa mise en fonction; et puis je terminerai sur quelques affirmations - et quelques interrogations aussi - sur les perspectives d'avenir de cette agence, et peut-être des agences en général au niveau de la Communauté Européenne.

Quelles sont les raisons qui ont amené l'Union Européenne à décider la mise en place d'un Observatoire européen des drogues et des toxicomanies ? La principale raison tient au fait que récemment, les Etats-membres de l'Union Européenne, et l'Union Européenne, se sont trouvé confrontés sur ce sujet de la drogue, à une contradiction importante. Contradiction importante entre les objectifs de politique générale économique mise en place par l'Union, et en particulier la mise en place du marché unique, et les conséquences que cette mise en place pouvait avoir dans un domaine social sensible comme l'est celui de la consommation et du trafic de drogue en Europe. Cela situe donc tout de suite le moment dans l'Histoire où la question a commencé à se poser sérieusement: nous sommes à la fin des années 1980, très exactement en 1988-1989, on a dans la ligne de mire l'abolition des frontières dans la Communauté européenne et on n'a pas de réponse du tout au niveau européen au problème de la drogue. Ce problème, alors qu'on est en train de démobiliser les frontières, est encore considéré par tous comme un problème exclusivement national, c'est à dire complètement encadré dans les frontières de chacun de nos pays, qu'on est justement en train de faire disparaître. C'est donc une contradiction de taille. Bien sûr, il s'agit en outre d'un sujet qui n'est ni simple ni linéaire. Il n'existe pas de réponse monolithique ou monocéphale, ou monopolitique, au problème de la drogue. La lutte contre la drogue, c'est toujours un cocktail très difficile à établir et à coordonner entre des actions d'une part de type répressif. D'autre part, ce sont des mesures de santé publique destinées à tenter d'apporter des remèdes aux phénomènes de la toxicomanie et aux toxicomanes. Enfin, progressivement, ces dernières années, on a eu aussi recours à des mesures de santé publique qui se situent plus en amont et qui visent à tenter de prévenir la toxicomanie. Voilà le sujet complexe devant lequel se trouvent les douze Etats-membres de l'Union Européenne dans la deuxième moitié des années 1980.

Alors comment l'idée d'une agence a-t-elle émergé ? Je crois que c'est intéressant - c'est un peu anecdotique, mais cela ne manque pas d'intérêt. L'origine de cet Observatoire, la première fois où le nom même a été sinon prononcé, du moins écrit, est une lettre du Président Mitterrand d'octobre 1989 adressée aux onze autres chefs d'Etat et au Président de la Commission, qui justement avait pour but de commencer à articuler une réponse au malaise que je viens de dire. Le Président Mitterrand proposait de mettre en place un comité politique, au niveau coordinateur de la lutte contre la drogue dans chaque pays des Douze, plus la Commission, pour discuter de "qu'est-ce qu'on peut faire ensemble?" dans le paysage juridique qu'on avait à l'époque, qui était évidemment assez pauvre. L'une des mesures - c'était la seule mesure concrète d'ailleurs, mise à part la mise en place d'un comité - était d'envisager la création d'un observatoire européen de la drogue. Cette idée d'observatoire européen nous a paru dès le début une idée intéressante pour de multiples raisons. La première raison, c'est que, s'agissant d'un observatoire européen, il devait être par essence transversal, c'est à dire il devait observer l'Europe dans tous les sens: Nord-Sud, Est-Ouest, et dans toutes les dimensions du problème, dans la globalité du problème de la drogue, aussi bien les problèmes liés à la consommation des drogues, à l'abus des drogues, que les problèmes liés à son trafic. En y incluant d'ailleurs un aspect extrêmement important aussi, qui est la dimension externe, mondiale, parce que le problème de la drogue n'est pas seulement un problème européen, c'est un problème global à l'échelle de la planète. La dimension des relations entre l'Union Européenne et le monde entier - mais spécialement l'Amérique du Nord et l'Amérique Latine, pour des raisons différentes - était évidemment un aspect prioritaire.

A la Commission, nous avons lancé un processus de faisabilité de cet observatoire européen. Nous avons décidé de procéder à une consultation de chaque Etat-membre sur ce qu'il pensait que pourrait et devrait être un observatoire européen des drogues. Autrement dit, au lieu de réfléchir, soit dans un bureau de la Commission à Bruxelles, soit dans une officine d'un bureau d'études auquel on aurait délégué cette tâche - nous avons décidé au contraire de mobiliser un petit groupe de fonctionnaires et d'experts pour aller "interviewer" en quelque sorte les quinze Etats-membres - enfin c'était les douze à l'époque. Nous avons constaté que pratiquement les Douze avaient plus ou moins la même vision de ce que pourrait être une agence de ce type. Il a été constaté qu'il y avait au fond une espèce de consensus caché, ignoré, de tous sur la nature et les fonctions d'une telle agence, d'un tel observatoire. On s'est mis finalement assez rapidement d'accord sur le fond, mais on est entré très vite dans un autre débat - qui a été mentionné ici tout à l'heure - qui était le débat: "oui mais, quelle formule institutionnelle donner à un tel observatoire ?" Et là nous avons eu au départ trois options.

Une option très classique à la Commission qui eût consisté à établir un service spécialisé à la Commission à ce sujet. La Commission n'a pas choisi cette option, parce que, premièrement, nous étions toujours dans une situation de pénurie juridique, en termes de compétence, de la Communauté et par conséquent de la Commission, sur le sujet; que nous étions face à un problème extrêmement complexe, supposant évidemment une vision et une expertise technique que la Commission n'a pas, sur cette question. Il aurait donc fallu aller recruter à l'extérieur des personnes pour y faire face. Mais aussi bien sûr, il n'y avait certainement pas de consensus au niveau des Etats-membres pour que cette solution soit finalement choisie.

Alors le vrai débat a plutôt porté entre l'option intergouvernementale et l'option agence communautaire.

L'option intergouvernementale, soutenue fermement et activement par quelques Etats-membres, avait tout de même un inconvénient : elle avait déjà fait l'objet d'un premier essai. On avait déjà en 1971 créé au sein du Conseil de l'Europe ce qu'on appelle "le Groupe Pompidou", qui était précisément un organisme qui avait un peu les mêmes intentions mais qui, du fait des structures de l'Europe et du fait des moyens mis à sa disposition, n'a jamais pu parvenir à être un espèce de phare sur le problème de la drogue en Europe, même si nombre de ses travaux sont considérés comme essentiels pour nous aujourd'hui.

Et donc finalement on a pu réaliser un consensus sur la création d'une agence de droit communautaire, et on a demandé à la Commission à ce moment-là de faire une proposition - je crois en 1991 - et cette proposition a été faite début 1992 et a été négociée jusqu'au mois de février 1992, où le règlement a finalement été adopté à l'unanimité par le Conseil, puisque basé sur l'article 235 du Traité. Pour quelles raisons a-t-on fait finalement ce grand pas, si on le met en perspective avec le cadre juridique pré-existant ? C'est que l'absence d'information, c'est aussi une politique. Donc décider de faire de l'information, ce n'est pas neutre politiquement, c'est décider d'apporter de la vérité sur un sujet, c'est-à-dire décider que la décision politique pourra moins se faire à l'avenir sans référence aux réalités présentées par un système d'information qui fonctionne plus ou moins correctement.

Je passe à une deuxième étape: la mise en marche. Depuis 1993, nous avons donc la base juridique pour travailler; il nous fallait encore un siège (c'est un problème général pour les agences). Nous avons été fixés à la fin de l'année 1993, et c'est à Lisbonne que cet observatoire a été installé. Nous avons donc depuis 1994 commencé à mettre en place la structure. Je passe vite là-dessus parce que c'est une structure extrêmement classique: nous avons un conseil d'administration où sont maintenant représentés les quinze Etats-membres, plus deux représentants de la Commission européenne, plus deux représentants du Parlement européen. Nous avons donc là un équilibre qui est

évidemment un peu différent de ce qu'il peut être dans une organisation intergouvernementale, d'une part, ou dans une structure purement communautaire d'autre part. Du point de vue du personnel, nous démarrons petits: nous sommes aujourd'hui trente personnes tout compris, des agents temporaires avec un contrat de cinq ans, renouvelable - trente personnes en 1996, nous serons trente-sept en 1997. Le budget actuel de cette année: six millions d'ECUs. Du point de vue du personnel, nous avons une structure que je qualifierais de duale: d'une part, un staff administratif qui est chargé bien sûr de gérer les procédures communautaires (si l'on parle d'indépendance ou d'autonomie des agences, il faudra s'interroger là-dessus), les procédures communautaires qui nous sont pratiquement transférées sur bien des points: contrôle financier par exemple, le contrôleur financier de l'Observatoire, comme des autres agences, c'est le contrôleur financier de la Commission; la gestion du personnel se fait selon le statut du personnel des Communautés européennes. Mais la partie plus intéressante, c'est l'autre partie, c'est le staff scientifique. L'Observatoire est supposé devenir le centre d'excellence européen en matière de mesure technique du phénomène de la drogue en Europe. C'est très intéressant parce qu'il n'existait pas auparavant de structures établies en Europe où des experts et des scientifiques puissent travailler sur la durée - parce qu'il faut de la durée pour pouvoir mettre en place un système d'information sur le phénomène des drogues et des toxicomanies. L'agence communautaire le permet: elle a un budget en principe stable, elle a une structure de personnel en principe stable et aussi un personnel scientifique qui se met en place maintenant et qui va apporter la qualité de l'information qui manque jusqu'à présent.

Il y a un autre élément qui me paraît tout à fait décisif aussi dans la structure de cette agence, et c'est une plus-value énorme par rapport aux prédécesseurs, aux précurseurs (le Groupe Pompidou du Conseil de l'Europe), ce sont les courroies de transmission vers les niveaux de la prise de décision politique de l'Union. Le mandat de l'Observatoire européen, c'est de fournir aux Etats-membres et aux institutions de l'Union une base d'information fiable, comparable - fiable, comparable, pour parvenir à une prise de décisions politiques plus rationnelles dans le domaine de la drogue. Une autre plus-value de départ de cette agence, c'est que justement elle n'est pas du tout appelée à fonctionner comme un institut. Elle est surtout appelée à fonctionner comme un animateur, ce qui correspond bien d'ailleurs à la petite taille de son staff, au départ en tout cas, comme un animateur d'un réseau d'observatoires nationaux sur la drogue. Et cela, c'est pratiquement l'objectif majeur, de mon point de vue, de l'Observatoire européen. Je vais vous raconter pour illustrer cela une seconde anecdote, qui montre bien le lien entre le scientifique, le technique et le politique dans la mise en place d'une agence européenne. En fait l'idée de l'Observatoire était une idée française à l'origine, comme je vous l'ai dit,

puisqu'elle avait été présentée par le Président Mitterrand. Cela a été transféré et proposé au niveau européen. Mais seulement en France, à cette époque-là, on essayait tout de même de créer un observatoire français, et on n'y est pas arrivé. La France a abandonné ce projet et a eu l'idée de mettre cela dans une proposition au niveau européen. Au niveau européen, nous avons pu progresser. Et maintenant, l'année dernière, l'Observatoire européen étant en place, au niveau français on est revenu à l'attaque: il fallait bien trouver une contrepartie nationale à cet Observatoire européen. Cette fois on a trouvé le moyen au niveau national de créer un observatoire français, de lui donner un statut juridique autonome, de l'accrocher bien entendu à l'Observatoire européen et cette structure mise en place sur ce sujet l'année dernière en France a vaillamment passé le changement de gouvernement et est restée stable, il n'y a pas eu de changement de statut ni de personnes. Et cela, me semble-t-il, dans le domaine de la drogue c'est essentiel. Donc si nous arrivons, petit à petit, à entraîner une certaine stabilité du travail, à laquelle s'ajouterait la qualité technique, je crois que nous aurons en grande partie rempli notre mandat.

Un autre point important pour nous, c'est d'avoir rapidement une visibilité, et derrière la visibilité, la crédibilité. Comme nous ne sommes pas encore crédibles, nous avons choisi pour l'instant de ne pas être visibles. Nous allons devoir progresser un peu vers la visibilité dans les mois qui viennent. Il aurait fallu pouvoir dire ... - j'aurais aimé pouvoir dire: "donnez-moi trois ans, ne me demandez rien pendant trois ans, revenez dans trois ans et vous aurez peut-être une machine qui fonctionne à peu près bien. Parce que la mobilisation des points focaux nationaux, c'est quelque chose considérable et qui ne peut pas produire immédiatement. Tout de même, nous avons trouvé des compromis, bien sûr, et nous avons engagé nos points focaux nationaux dans un exercice périlleux qui est la rédaction de notre premier rapport annuel sur le phénomène de la drogue en Europe. Notre règlement prévoit que chaque année, nous publions un document sur ce phénomène de la drogue en Europe, et donc nous allons devoir sortir au milieu de cette année le premier de ces rapports. Ce ne sera évidemment pas encore un tableau de bord comme nous l'envisagions avons en tête, un tableau de bord sur l'extension du phénomène de la drogue, la mesure du phénomène, son évolution, les interrogations entre les Etats, etc., cela ne pourra pas être cela tout de suite, mais ce sera déjà, je pense, un bon atlas du système de travail, et dans le domaine politique, et dans le domaine technique, de l'information des Etats-membres sur le problème de la drogue.

Le travail en réseau était probablement une garantie de l'autonomie, relative mais enfin une garantie de l'autonomie et de l'indépendance des agences. C'est tout à fait vrai, c'est ce que nous expérimentons aussi: nous, nous avons à trouver la quadrature du cercle dans ce domaine, ce que personne n'a réussi jusqu'à présent. C'est d'une part être de bons amis avec les organisations internationales et européennes qui s'occupent déjà du sujet, y

compris le précurseur, le prédécesseur, le Groupe Pompidou du Conseil de l'Europe. Jusqu'à présent nous avons six organisations avec lesquelles nous devons coopérer étroitement: le programme des Nations Unies sur la drogue, qui est installé à Vienne, le Groupe Pompidou du Conseil de l'Europe à Strasbourg, l'Organisation Mondiale de la Santé à Genève (et son bureau Europe, à Copenhague), Interpol, l'Organisation Mondiale des Douanes, et - surtout peut-être - Europol, l'Unité Drogues d'Europol. Mais nous avons un autre exercice assez redoutable à tenter : l'ouverture de cet Observatoire aux institutions publiques, mais aussi privées, y compris les organisations non gouvernementales, de recherche qui ont un mot à dire en termes techniques sur le problème de la drogue et sur l'information sur la drogue en Europe. Pour cela nous avons lancé un appel à travers le *Journal Officiel des Communautés Européennes*, et nous avons maintenant identifié un nombre assez considérable de partenaires avec lesquels nous allons développer notre programme de travail, donc à qui nous allons confier certaines des tâches qui font partie de notre programme de travail.

Je ne peux pas finir sans parler des perspectives d'avenir. On peut se poser un certain nombre de questions. Premièrement: un des objectifs de fond que nous avons dû fixer au départ, c'était l'objectif de la globalité de l'observation du problème de la drogue, incluant l'épidémiologie (c'est à dire la mesure scientifique et pratiquement arithmétique de la consommation), mais aussi les législations, les politiques de lutte contre la drogue (nous avons à faire un bilan de ces politiques et même à faire une évaluation - on commence à nous demander de faire de l'évaluation des politiques de réduction de la demande de drogue ; lorsqu'on fait de l'évaluation des politiques, on n'est vraiment plus très loin de la politique tout court évidemment). Mais nous avons aussi les aspects internationaux progressivement à couvrir et nous avons les aspects plus proprement répressifs (en termes d'analyse, il ne s'agit pas de faire de l'information opérationnelle, cela c'est pour les policiers ou les douaniers, et en particulier c'est pour Europol), tels que le blanchiment de l'argent, les précurseurs chimiques; voilà des objets d'observation qui sont inscrits dans le règlement de l'Observatoire. Nous n'avons pas pu commencer tout cela dès le départ, et nous concentrons les trois premières années, jusqu'à l'année prochaine 1997, sur la demande de drogue et la réduction de la demande. Mais déjà nous travaillons, comme vous avez pu le voir, avec des partenaires qui nous apportent de l'information venant des autres secteurs et nous sommes déjà sûrs de l'information globale.

Quant aux changements de structures nationales que cela peut induire, l'exemple de l'observatoire français me paraît net. Tout cela doit avoir pour conséquence que l'information produite au plan national devienne de l'information responsable, et que nous ayons à Lisbonne la charge de synthétiser cette information responsable nationale produite sur le sujet -

comme vous le savez, en matière de drogue, cela n'est pas un objectif simple à atteindre. Cela doit avoir un impact sur le fonctionnement des institutions européennes. Nous avons une première petite satisfaction à ce stade vraiment préliminaire, qui est que le Sommet de Madrid a adopté un document programmatique sur la lutte contre la drogue - puisqu'entre temps il y a une compétence communautaire sur le sujet - qui démarre sur une présentation du problème de la drogue en Europe, qui est une présentation conjointe entre l'Observatoire et l'Unité Drogues d'Europol. C'est une grande première. Cela a été adopté, tel quel, par les chefs d'Etat à Madrid, et nous sommes évidemment contents de cela mais aussi la précision et la qualité de ce document n'est pas encore celle que nous avons en tête. En tout cas, cela marque bien que les chefs de gouvernement acceptent d'utiliser leurs instruments, et n'ont pas créé ces instruments pour les laisser de côté.

La crédibilité, l'indépendance, le networking, je suis tout à fait d'accord avec cela, alors: ce que je prévois comme avenir, c'est bien sûr, à partir de 1998, la couverture plus globale de l'ensemble du mandat déjà défini dans le règlement. Au-delà de cela, je ne suis pas du tout impatient ou - comment dire? - ambitieux - dans le sens de "est-ce qu'on ne va pas avoir un rôle de proposition de décisions politiques, voire même de gestion de certains morceaux de politique de lutte contre la drogue?", je ne crois pas que ce soit souhaitable, parce que je suis convaincu que l'information est le premier élément de la politique, et que si nous n'avons pas un instrument fiable dans ce domaine-là, ce n'est pas la peine de penser à une prise de décision rationnelle en matière de drogue en Europe dans les années qui viennent. Donc, c'est vraiment sur cette institution telle qu'elle est qu'il faut mettre - comme on dit - "le paquet".

EUROPEAN MEDICINES EVALUATION AGENCY : STATUS REPORT

Fernand SAUER, Executive Director

I. The New European Registration System for Medicinal Products

The Council of the European Union adopted in 1993 the regulation and directives concerning the creation of two new Community authorisation procedures for human and veterinary medicines and the establishment of a European Medicines Evaluation Agency (EMA). London was chosen as the seat of the Agency, and the new system for the free movement of medicinal products within the Community became operational in February 1995. In essence, these new measures are intended to promote the free circulation of medicinal products within the European Union, while reinforcing the protection of public health. In particular, they should permit the rapid access of new products to a Community-scale market. A single evaluation of the highest possible scientific quality can be undertaken through the new European Medicines Evaluation Agency, working in close partnership with the existing national authorities in the Member States. The European Commission is responsible for enforcing EMA's opinions through pan-European decisions.

• Choice of procedures and co-operation with national authorities

Since 1995, three registration procedures for medicinal products for human or veterinary use are available to pharmaceutical companies operating in Europe:

- A centralised registration procedure, reserved for innovative medicinal products, and leading to a single authorisation, valid for all the Member States of the European Union.
- A decentralised procedure applying to the majority of other medicinal products, based upon the principle of mutual recognition, and covering a number of Member States.
- A national procedure, which after 1997 will be limited in principle to applications of local interest concerning a single Member State.

The support and commitment of all national authorities and of the European Commission in terms of time and resources has been a vital element for the

smooth development of an Agency and a system in which industry can have confidence - as shown by some 30 new applications for the central approval of medicinal products received since the second half of 1995. Over two-thirds of these were voluntary applications which could have used alternative national routes for authorisation.

- **Harmonised requirements, soft law and subsidiarity**

Criteria and procedures for approval of human and veterinary medicines, together with several other important aspects of pharmaceutical legislation, have been extensively harmonised within the European Union. The Community provisions applicable to medicinal products include binding legislation (regulations and directives), as well as "soft law" in the form of numerous guidelines on the conduct of the quality, safety and efficacy studies and a notice to applicants describing the administrative procedures to be followed in order to obtain authorisation of medicinal products.

The EMEA is also responsible for the coordination of national activities with respect to post-marketing surveillance (pharmacovigilance), inspection and laboratory controls, to ensure the safety of medicinal products circulating within the Community. However, the actual conduct of inspections continues to be the responsibility of each national authority, who must supervise the pharmaceutical market on behalf of the whole European Union.

II. Main Achievements of the EMEA, One Year after Inauguration

- **Pooling the best pharmaceutical expertise at European level**

One year on from its inauguration on 26 January 1995, the EMEA and the new European registration system have proved the centralised procedure to be a real success. The Committee for Proprietary Medicinal Products (CPMP) and Committee for Veterinary Medicinal Products (CVMP) are fully functioning independent scientific committees. With this new organisation, they have also each created a number of permanent and ad hoc working groups. The new scientific emphasis of the committees' work has been strengthened by their access to over 1,600 experts on the Agency's European experts list. This list is now available for public consultation at the EMEA's premises.

- **Binding European Decisions**

Despite all the difficulties experienced in the initial setting-up of the Agency, 13 positive Opinions have so far been adopted by the CPMP by consensus. These have all been transmitted to the Commission and Member States. Seven Opinions were transformed by the Commission into European Marketing Authorisations since October 1995 and more decisions are expected shortly from the Commission.

Following the CVMP's opinion, the Commission recently authorised a new veterinary vaccine. The CVMP, working against a tight deadline to fix maximum residue limits (MRLs) for veterinary medicinal products by the end of 1996, adopted some 200 recommendations for MRLs which have been or will be implemented in Commission Regulations.

Another innovation is that companies can now ask the EMEA, through its committees, for scientific advice long before they make an application for a marketing authorisation. Of the many requests received, the CPMP completed the examination of 8 cases, and the CVMP of one case.

- **Information Technology, Transparency and International Co-operation**

Better information for health professionals and consumers through harmonised Summary of Product Characteristics (SPCs) and package leaflets is a central part of the EMEA's work. As part of this commitment, the Agency makes the scientific assessment report (European Public Assessment Reports - EPARs) available to the public once the Commission decision is taken.

With the help of the Commission's Joint Research Centre, the EMEA is setting up a telecommunication network and other advanced computer technologies to facilitate the dissemination of information on medicinal products evaluated by the EMEA. An internetworking service (EUDRANET) will be established with the Commission and the competent national authorities during 1996.

After the first year of operation, the structure of the Agency strengthened and took form. A Directory giving further details of the committees and Secretariat is available, along with guidelines and drafts for consultation, press releases and EPARs on the Agency's Internet home page at www.eudra.org/emea.html.

Within the context of current activities of the ICH process (International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use) between the EU, Japan and the US, the Agency has already made an important technical contribution. 19 Trilateral Guidelines were already adopted and 19 more are under consideration before the Fourth International Conference, ICH4, in Brussels, July 1997. In 1996, the EMEA looks forward to initiating, together with the European Commission, a similar trilateral effort for veterinary medicinal products - the VICH.

III. EMEA's Budget and Staff: Evolution and Trends

• Budgetary perspectives

The revenues of the European Agency for the Evaluation of Medicinal Products (EMA) consist of a contribution from the European Union's budget and the fees paid by the pharmaceutical industry for obtaining and maintaining central marketing authorisations, as well as other services provided by the EMA. Council Regulation (EC) No 297/95 on fees payable by industry to the EMA was adopted in February 1995 and will have to be reviewed, in consultation with Parliament, before 1998.

During its preliminary installation period in the last quarter of 1994, the EMA received a Community subsidy of 6 800 000 ECU, devoted to the selection, leasing and fitting out of the Agency's headquarters in Canary Wharf and the initial installation of computer and telecommunication networks. The 1995 budget amounted to ECU 14.4 million, mainly based on a Community subsidy of ECU 10.4 million. The EMA received new applications from companies, accompanied by the relevant fees, amounting to about ECU 3.5 in 1995.

For the 1996 budget, the Management Board approved an amount of ECU 23.5 million, based on a subsidy of ECU 13.75 million (2.75 still "frozen" by the European Parliament) and an expected fee income of ECU 9.6 million in 1996. The 1997 budget is currently estimated at ECU 34.7 million, including an expected ECU 17 million fees to be paid by the pharmaceutical industry. The Management Board has requested a subsidy of 17.5 from the European Budgetary Authority under the 1997 draft preliminary budget.

• Evolution of staff at the EMEA

The Secretariat of the Agency is primarily responsible for providing administrative and technical support to the Scientific Committees and their Working Parties. The Agency has no permanent staff yet and staff recruited through the competitions are offered contracts of five years, in accordance with the rules and practices of the EU institutions. Once selected by an independent jury, candidates are placed on a reserve list from which they may be selected for a post. Staff come from throughout the European Union and it is anticipated that the increased number of staff will allow a fair presence of all nationalities.

The staff structure is rapidly evolving. Starting with 16 people the Agency grew to some 67 by the end of 1995. Recruitment is planned to reach 100 by mid-1996 and 140 by the end of 1996. It is expected that about 250 members of staff will be working at the Agency by the year 2000. This represents a relatively small number of staff compared to major regulatory authorities around the world which employ several thousands of staff in the pharmaceutical sector (5000 at the US Food and Drug Administration).

• Major challenges for the EMEA

The Agency has enjoyed the support of both consumers and industry and it is expected that the workload of the Agency will dramatically rise over the next few years. Unfortunately, the level of revenues, both from subsidy and fees has been uncertain from the start and drastic reductions or reserves were imposed without proper consultation.

All parties involved in the new registration system, in particular the main European Institutions, must be aware that the EMEA needs adequate resources with which to carry out its main public health functions in relation to the safety of medicinal products for human and animal use. The extent to which the workload will increase will also depend on the confidence industry has in the EMEA being able to efficiently undertake its tasks. Part of this debate in Parliament and Council will undoubtedly concern whether or not the Agency should be self-financing, probably by the turn of the century.

THE EUROPEAN ENVIRONMENT AGENCY

Domingo JIMENEZ-BELTRAN, Executive Director

THE ORIGINS OF THE AGENCY

It is now more than two years since the regulation establishing the Agency came into force, with the decision of the European Council of 29 October 1993 to locate the Agency in the Copenhagen area.

1. Environment has been one of the EEC policies that has developed rapidly in recent years. Although there were no specific provisions in the 1957 EEC Treaty concerning the environment, the European Council meeting in Paris in 1972 joined the many initiatives of that year, in particular the UN Conference "Human Environment", and asked for an EC environmental action programme, the first of a continuous rolling environmental programme. The latest one, the 5th, "Towards sustainability" specified the programme until the year 2000.
2. During these 22 years, the environment has not only been introduced into the Treaty, already adopted by the Single European Act (Art. 130 R.S.T.) in 1987 and reinforced in the Union Treaty adopted in Maastricht, but has also become a goal for the European Union in the pursuit of "sustainable growth, non inflationary, and respecting the environment", as indicated in Art. 2 of the European Union Treaty. This policy is implemented through more than 200 acts, mainly regulations and directives, that can be credited for an important share of the increase in life quality all throughout the EC and for the EC contribution to mitigating transnational and global environmental problems.

As many of us have repeated, should we not have had an EEC nor an EU, we should have needed one on environment grounds.

3. In the dynamic process, during the 80's, the required shift from a "reactive environmental policy" to an "active" one was evident, from "end of the pipe" solutions to "action at the source", from "correction" to "prevention", from the "environment as burden" to "environment as a challenge and an opportunity" for assuring a continuous and balanced improvement in the quality of life..., which implied an increase in the institutional capacities to provide the policy-makers (and the public in general) with the best

information to develop and implement adequate measures at national and EU level.

4. The European Council in December 1988, in the Rhodes Declaration, requested a major effort in environmental matters and the Commission reacted immediately; President Delors himself announced in his speech to the European Parliament of January 1989 the "setting-up of a European measurement and control Network comprised of public or private, regional or national facilities". With this declaration, that surprised even the EC Services, Jacques Delors was anticipating the need in the then emergent Information Society of separated bodies dealing only or mainly with information, and for which reliability and credibility will be paramount.
5. While presenting the proposal¹ for the creation of the European Environment Agency in July '89, Mr. Ripa di Meana (Commissioner in charge of Environment at the time) stated that "...the main purpose of the Agency is to aid the Member States in meeting the environmental protection and restoration goals, as defined in the Treaty and in the different environmental programmes of the Community".

At this time, the Commission was responding to the pressure from the very active European Parliament Environment Committee, and to the need, also recognised by the increasingly influential Environment Ministers, for improved information to face their growing and complex responsibilities.

It is clear that the Agency and the related European Information and Observation Network were not only conceived or expected, as a partner, to provide information, but also as an environmental watcher or, to some, a "watch dog" of EU legislation and compromises. Through analysis of the tasks to be performed by the Agency, it is seen that its constructive role is dominating while improved information will certainly contribute to better (and objective) control of the respect of, or otherwise, the adequacy and efficiency of EU environmental legislation.

6. The objectives of the Agency² are to provide the Community and the Member States with objective, reliable and comparable information, enabling them to develop and implement adequate environmental policies, and to assure that the public is properly informed about the state of the environment.

¹ Com 1989 Final 303, 12 July 1989.

² EC Regulation 1210/90 of 7 May 1990.

Since the Agency has to furnish information which can be used directly in the implementation of Community environmental information, another characteristic, and maybe the one that covers them all, is that the Agency has to produce efficient information and in an efficient way. Efficiency is no doubt a key word in achieving sustainable development, as has been mentioned also by some industrial leaders, and it is without doubt a goal shared by economic, political, social and environmental agents, while the other key word for sustainable development is equity.

7. The Agency has to establish itself and to prove that it is an independent and reliable source of efficient information. The EEA has to assure that, as is stated in Article 130R of the Treaty, actions regarding the environment at the Union level take into account, inter alia, available scientific and technical data, considering the different situations of the Member States.

In applying the principle of efficiency, the first and immediate goal of the EEA is to screen, evaluate, validate, and process (add value to) existing data and specific information to transform all this into efficient information both for public institutions and the public at large.

Besides, the Agency, supported by a European Information and Observation Network (EIONET), has to provide the necessary guidelines and technical specifications so that future information developed is reliable, consistent, comparable (when possible, taking into account the different situations), and efficient, to be used directly, addresses priority questions, and is produced with the minimum possible personal, technical and economic resources.

The use of existing data and information, and the improvement of existing capacities in Member States and other European institutions to produce reliable and efficient data and information is, without doubt, the main goal of the European Environment Agency.

8. During informal consultations with key representatives of industry councils and non-governmental organisations prior to drafting the Agency's work programme, I was struck by the repeated and common insistence on the need for the new Agency to call to order existing information resources and to put them to more open, efficient use, as a matter of higher priority than multiplying or expanding such resources.

Besides the added value that the Agency has to give such data and information to transform them into efficient and accessible information for

the institutions and the public, the Agency has to develop some new projects to develop information capital at the European level ("taking stock") and to develop products that allow the institutions and the public to use it ("capacity building"). But these needs will have to be in balance with the anticipation and prospective activities to establish the necessary basic work to answer the new challenges that appear in the environmental field and to develop the instruments for application of the new principles (prevention, precautionary principle, no-regret strategies, shared responsibility, environmental cost, internationalisation, polluter pays principle, resource-user pays principle, introduction of the state of the environment and the natural resources into national accounts, etc.).

Many are the tasks of the Agency in order to achieve the goals mentioned, and many are the areas to cover, since environment is a very large concept, above all when it has merged with development, which means that some priorities have to be established.

9. The Regulation reflects, in Art.20, the result of the compromise reached at the time to satisfy the demands of the European Parliament to have the Agency playing an active role in cooperation with the European Commission in the monitoring of the implementation of Community legislation, and most of the Member States' opposition to it. Therefore, a review of the Regulation was foreseen for two years after its entering into force, on the basis of a report and appropriate proposals from the Commission.

Other further tasks have also to be considered in the areas of environmental labeling, clean technologies and environmental impact assessment.

10. In addition, the Regulation, as for other Agencies, and as a result of the battle for seats of the different EU bodies, includes a clause, Art. 21, by which it should only enter into force on the day following that on which the competent authorities have decided on the seat of the Agency. This was three and a half years after the date of adoption.

Fortunately, two facts allowed that, even with the formal opposition of

some Member States, some preparatory work could be done during these years:

- The CORINE (Collect and Coordination of Information on the Environment)³ project; a demonstration project related to environmental information (Air, Biotopes, Land-cover ...), and that formally came to an end in 1990, was a successful experience and the Commission Services have continued it.
- The European Commission Services, and in particular DG XI, established within its own capacities a Task Force to assure the exploitation of CORINE and also the coordination and drafting of a report on the State of the Environment for the whole of Europe (as demanded by the Sofia 1991 Conference of European Environment Ministers), and also to do some preparatory work for the Agency, acting informally as a forerunner, known as the EEA Task Force. This came to an end in the summer of 1994, when the new Director of the EEA assumed his duties in Copenhagen.

THE BUILDING-UP OF THE AGENCY

11. The Agency has not developed as quickly as we would have liked, and certainly not quickly enough to satisfy the growing expectations developed or increased by the 3 1/2 years of waiting, but it was able to open its doors at its first anniversary in November 1994 and to present important achievements, measured by its delivering of significant products (reports) and services already in its second year of formal existence and its first year of real operation in 1995.

This year, 1996, should be a year of consolidation for the Agency (coping, finally, with some administrative and budget control problems, improving our general management plan and completing the staff, and catching up with some backlogs and bottlenecks, in particular, translation and publication) and above all of building up, following the compromise of the Council and the Member States, of the EIONET (The European Environment Information and Observation Network), wherein all the National Systems participate and that, with its more than 450 Institutes, is a basic capacity for the Agency. The only adequate building up of the national systems is in itself an achievement.

³ OJ L 176 of 6 July 1985.

12. With regards to personnel, the Agency followed, from the beginning, the principle of equal opportunities, all the available posts in 1994 being published in the *Official Journal* and to fill the additional posts of the 1995 establishment plan from the resulting reserve lists.

The selection process, with more than 7,000 candidates, has been a long (over one year) and costly exercise, but the result has been the progressive incorporation of adequate experts and project managers basic to the operation of the system. Of the 54 staff of the 1996 establishment plan, 34 are in place, 8 are in the final phase of contracting, 9 posts have been published again, since adequate personnel could not be identified or was not available, and 3 are pending republishing.

An important limitation, above all with regards to posts where adequate and experienced administrative personnel could be found in the EU Institutions and in particular in the European Commission, has been that, due to the fact of the Agencies not being included among EU bodies under the mobility clause, the recruitment of such personnel has not been very successful. Anyway, many of the required staff for the Agency are experts in areas not necessarily covered by EC Services.

While in the original establishment plan there were provisions for some permanent posts, all except those related to Administration and Personnel, are now temporary, the contracts being established for a period of 5 years.

13. The revenue of the Agency is basically a subsidy from the Community entered in the general budget of the the European Community. There is also a contribution from the EEA countries since they are also members of the Agency, and other Third Countries may contribute as they join the Agency. Payments for services rendered is also possible and the possibility of developing a self-financed publication programme, considering the volume of information and the additional costs of translation into the different languages (13 for the EEA space, and more than 20 when trying to cover the European audiences), publication and distribution is being considered.

Following the Opinion of the European Parliament, and while the Regulation allows for the EEA Management Board to designate another Financial Control, that from the EC has been designated. Following some bad experiences in 1995 related to the proper control and implementation of the budget, capacities in this area have been substantially increased and financial management is being reinforced.

14. The existence of an informal forerunner, such as the Task Force, has in some aspects facilitated the launching of the Agency, and, in particular, has allowed the Agency, building on the information that existed, to deliver products, reports, in its early days and with a still limited staff. Some of the Task Force staff has, by competing in the general recruitment procedure, come to Copenhagen. There has been no direct transfer of personnel.

The experiences of the Task Force and of the CORINE Programme were useful but were not enough for defining a model to structure the Agency. No similar national bodies existed, so the process followed has been to translate the mandate of the Regulation into operational Work Programmes (Multiannual, '94-'99, and Annual '94-'95) that were adopted in September 1994, and, on the basis of these to define the organigramme of the Agency and the posts, published by the end of October 1994. It has been a long process, but, with the exception of the part related to Administration, that was not of an adequate dimension to cope with the required task, this approach has been very efficient.

15. The Regulation, very criticized when adopted, is showing its worth in its implementation within the framework of the Information Society and above all in supporting European Union development and the prospects foreseen the IGC.

The goals of more efficient EU Institutions, improve public information (awareness) and participation, and a more active role of the EU on the international scene, are very much facilitated by the availability of reliable and efficient environmental information (the best available information), that is the goal and main/only task of the Agency. The necessary expansion of the EU, with the adhesion of the East and Central European Countries, should be facilitated by the on-going pan-European work of the Agency and the fact that many of these countries will join the Agency as part of the first steps to join the EU. So the Agency is already facilitating the building-up of the natural EU, the Ecological Union.

16. In this context, the present allocation of functions is adequate while too broad, since it is not only related to information on the state and trends of the environment but also to the state and prospects of action, involving not only monitoring but also policy analysis. Giving to the Agency direct tasks of inspection or control of the implementation of legislation, or in environmental management (ecolabeling), or as an arbitration body should affect its main role, distract required capacities to it and eventually change

its possibilities to be recognized as an independent, and credible source of the best available environmental information.

17. The Institutional arrangement is in general adequate. But the possibility of the Agency having a direct relation with the EU Institutions, and in particular with the Council and the European Parliament, especially in the process of Budget adoption (while keeping the EC related services informed) has to become a reality.
18. Networking and cooperation, are fundamental to the Agency, since it is a small unit based mostly on existing or build-up external capacities. Both the principles of exploiting and of avoiding duplication of existing capacities are paramount in the work of the Agency.

The Regulation established the Agency and dictated the setting-up of a European Environment Information and Observation Network (EIONET), which the Agency is supposed to establish, in cooperation with the Member States, and to coordinate. This work is progressing. Operational Memorandum of Understanding (MoU) and concrete work programmes are established with EC Institutes and Services (EUROSTAT and JOINT RESEARCH CENTRE), as mandated by the Regulation. Good cooperation with and support to the relevant EC Services, in particular with DG XI, is operating.

19. The Agency is also supposed to be very active in international cooperation, as mandated by the Regulation, to promote the incorporation of environmental monitoring programmes and to support its own work and avoid duplication. MoU's are already operational with the WHO, UNEP and similar arrangements are being established with the ECE, the OECD, and Council of Europe

The Agency is also cooperating with some Central and Eastern European countries under the PHARE programme, and hopefully soon also under TACIS. Furthermore, cooperation with Institutes of other Third relevant Countries is also being developed, in particular with Switzerland (that has applied for EEA membership) and the USA, as well as participation in project 6 of the G7 programme related to the Information Society.

20. The most serious current problems facing the Agency so far are:

- The efficient operation of its “variable geometry” configuration (the EU; the EU + EEA; the Pan-European dimension ...), that has to be tackled by

“ad hoc” projects, products and services and by different financing configurations.

- The limitations, in this context, to establishing an effective, efficient and feasible public information and dissemination system, including translation and publication in many languages and broad distribution. Even with electronic supports, home pages on INTERNET (see <http://eea@www.dk>), CD ROMS and other developing mean, translations will still be needed and paper publications required.
- The streamlining of the production and distribution process (a single “twin key” project with the Translation Centre and the Office of Publications, both in Luxembourg, on the basis of a first original provided by the Agency) and either an external or decentralized financing system (by the Member States concerned by the language version) or a self-financing publication programme (price policy) has still to be established.
- The establishment of adequate structures, capacities and supporting instruments for administration, financial management, budget implementation and control. The EC Services’ support, or supply of, services of a general character or need, such as those now performed by DG IX with regards to personnel, that are better and less costly done in Brussels, should help to avoid oversizing of these structures and distraction of resources required for the specific tasks of the Agency. The development or adaptation of existing procedures to the size and budget of the Agency, including required software, is also needed.

21. As for the future, the efficient implementation of Agency tasks will be very much related to the solution of a number of developing problems:

- Difficulties in defining the information demand model. Inputs from the environmental policy agenda both at EU and national levels will be of key importance to guide in part (the Agency also has to feed in its own priorities resulting from its own evaluation) Agency work, but have proven to be problematic because of the lack of medium-term strategies in many cases.
- Growing expectations from the Institutions, socioeconomic agents and the public in general (in particular NGOs) in the field of environmental information. Keeping the size of the Agency at an adequate dimension, avoiding excessive bureaucracy and pushing continuously for capacity-

building of existing information systems will require an on-going exercise of prioritizing and a change of course in information strategies toward delivering only effective and efficient information which will involve many risks.

- In this context, the biggest challenge for the Agency will be to assure, under the existing terms of the Regulation and other EU legislation and norms of application, a flexible structure, in particular regarding staff, to adjust it to the changing needs, and evolving working programmes. The mobility of the staff will be of paramount importance.
- The big challenge will continue to be that of being recognized as an independent source of reliable information, of the best available environmental information. The Agency has to serve policy-makers (with timely and efficient, targeted information) and the public (with accessible and credible information).

FUTURE PERSPECTIVES

22. Capacity-building and improvement of the operation of different national systems and related European networks, in particular:

- The EIONET (The European Information and Observation Network).
- The related National Environmental Monitoring and Information Systems.
- The European Environment Topic Centres, including public and private Institutes and also experts networks as well as less formal information structures.
- The extension to third countries, in particular to Eastern and Central European Countries. (Not only through cooperation but also by “mimetisme”, of the EEA information strategy and work programmes and above all of those EEA networks, formally or informally).

The Agency is having and will have an increased effect on improving national systems and capacities, but is also making available better supporting capacities to EC Services in the field of the environment. In addition, the building-up of common information systems, Member States' participation in broader European networks, and the sharing of information

will progressively change national structures, introducing harmonisation as a fact more than as a regulated requirement.

23. There is no doubt that there are many additional driving forces behind the changes that can be facilitated by the building-up and proper operation of the Agency and related networks:

- The emergent civil society, in the progress from representative towards participatory democracy, requires better informed agents and public.
- The main agents, the NGO's, including also the socio-economic ones, Industry, Federations ... are directly or by means of "lobbies" more and more active in striving for better available information.
- Market forces push for informed choice and competition also on environmental quality grounds.
- The national and the European Parliaments require better information for the policy and decision-making process and to make national governments and the EC Commission more accountable and to submit to informed prior consultation processes when launching new initiatives.

24. The Agency's main goal is to support and increase the efficiency of the related European Institutions, the European Commission in the first instance, but also the European Parliament and the Council by providing them with better and more targeted environmental information.

The Agency should help the European Commission to identify, prepare and evaluate adequate measures, including legislative, in the field of the environment, and should also reinforce the EC task of ensuring the implementation of Community legislation by Member States. It should also simplify and support EC work related to the so-called Reporting Directives that imply processing large amounts of information provided by Member States as part of implementation control.

It should facilitate debate and evaluation of EC proposals by the European Parliament and Council of the EC proposals as well as the so much required by the European Parliament "prior consultation" process by providing status of the situation and trends reports prior to EC proposals. The Agency will also facilitate political initiatives or mandates at this level, by providing periodical or targeted timely reports and early warnings.

In general, the decision-making process could be better served, along with the parallel or interactive public information and participation process.

In this context, it must not be forgotten that the Agency is also mandated to serve Member States' requirements in order to satisfy the goals of EU environment policy, which may imply information on areas where there are no measures at EU level, since these are decided by the Member States under the principle of subsidiarity. This, therefore, implies a broader interpretation concerning the information of interest to be developed at European level.

25. The credibility of the Agency is and will increasingly be of paramount importance in assuring the efficiency of its tasks and to the fulfilment its mandate.

For this, it has to establish itself as an independent source of the best available environmental information.

This implies:

That no additional tasks, un-related to information are given to the Agency, which could determine an oriented or interested or restricted information strategy.

That no end of the pipe controls over the final products or reports of the Agency, other than those, i.e. by the Scientific Committee, as part of a and other formalized quality assurance process, be established nor suspected to exist.

That the Agency remain open to all sources of the best available environmental information.

That the Agency, by timely and periodical reporting, continuously expose what is considered to be the best available environmental information and the related sources and methods used.

26. Experience until now has shown that in principle no further tasks should be given to the Agency and certainly no further powers, that the existing tasks are more than enough and the better and efficient execution of these in the coming years should also indirectly imply ("information is power") the required powers of the Agency to assure what is now a weakness of the Regulation, its failure to imply a direct or enforceable obligation for

Member States to develop adequate environmental monitoring and information systems, or to deliver related data and information (out of those required by the Reporting Directive).

If Member States continue to consider the role and tasks of the Agency as constructive and their participation in EIONET as rewarding in the progress towards positive (non-reactive) environmental policy (where the more you do the better) the Agency does not seem actually to need neither more tasks nor powers. The Regulation does not need to be reviewed for the moment, only efficiently implemented. All this is pending the evaluation and review process to be initiated by the EC in 1997 and the subsequent decisions under Article 130S of the Treaty.

THE EUROPEAN TRAINING FOUNDATION

Peter DE ROOIJ, Director

ORIGINS OF THE EUROPEAN TRAINING FOUNDATION

The idea of the ETF was born at a very special moment in European history - the fall of Communism in Hungary and Poland in 1989. The west was very quick to respond to this political earthquake. The Group of 24 most industrialised countries decided to join forces to support the newly-created democracies and asked the European Commission to co-ordinate the G-24's assistance to those countries.

It was the European Council at its summit meeting in Strasbourg in December 1989 which decided that training and education were among the priority areas for assistance to Hungary and Poland and which invited the Commission to put forward specific proposals in this area. There appears to have been broad support among the Member States all of whom wished to be seen to respond to the events in Eastern Europe and to uphold the fragile new democracies. The Parliament was equally supportive of the idea of a European Training Foundation which would help to co-ordinate assistance for the reform of the vocational training systems in the countries concerned.

To sum up, the Foundation was one of the outcomes arising from the need to respond positively to a specific set of political circumstances.

The Commission subsequently submitted two specific proposals in January 1990. One was for the European Training Foundation; the other was the Tempus programme for co-operation in higher education, which much later was transferred to the Foundation to implement.

There were no major difficulties in the passage of the regulation establishing the Foundation due to the fact that a general consensus on the principle existed. As a result, the regulation was passed relatively quickly - a sign that the Council and the Parliament recognised the importance of converting its intentions into concrete form given the dire economic circumstances in which the eastern countries found themselves.

If the adoption of the Foundation went relatively smoothly, the establishment of the Foundation was a different matter. The Foundation remained a mere piece of paper for another four years. This was because the regulation could not enter into force until the Member States agreed *unanimously* on where it should be located. This finally came about at the Brussels European summit in October 1993 when an agreement was reached on the sites of the various EU institutions, including the location of the agencies which are the subject of this conference today.

By the time that the European Council had finally decided on Turin as the headquarters of the Foundation in October 1990, the political map in Eastern Europe had altered dramatically since 1989. Eight countries had shaken off Communism, the Berlin wall had long fallen and the Soviet Union had disintegrated into some sixteen states. The Foundation's regulation enabled it to operate in all of the countries of Central and Eastern Europe but not in the ex-USSR. The Council had already given the political green light for an extension of the regulation at the Brussels summit. Consequently, the Foundation's regulation was amended in July 1994 to allow this wider geographical coverage: the twenty-four countries covered by the EU's Phare and Tacis programmes which support those countries in the transformation process towards a market economy.

It was at this point that the Commission decided to introduce a number of other "minor" changes which had significant consequences for the Foundation as an organisation. One was the decision to amend the regulation to the effect that the Financial Controller of the Commission became in fact the Financial Controller of the Foundation. The other change was to the terms and conditions of employment of the Foundation's staff. The latter now would benefit from the same terms and conditions of employment as Commission staff. Both amendments meant that the Foundation follows the Commission's rules on finance and personnel.

THE BUILDING-UP OF THE FOUNDATION

Governing Board

The Foundation's Director reports to a Governing Board made up of one representative from each EU Member State and two representatives of the Commission, one of whom acts as Chairman.

Advisory Forum

The Foundation is supported by an Advisory Forum which meets once a year and whose primary role is to advise the Governing Board on the work programme. There are some 90 members on the Forum, mainly training experts from the forty countries with which the Foundation operates.

Personnel

The Foundation started operations in Turin in January 1995 with 60 staff and by the end of the year was employing around 120 staff. The bulk of the remaining 60 staff could only be recruited at the end of 1995 for budgetary reasons. The Foundation was able to make a quick start thanks to the infrastructure already in place through the Tempus programme. Both generalists and experts are employed with the balance tipping towards generalists. The Foundation's staff exercise their skills mainly in managing the process of change in the education and training fields and as information brokers.

Finance

For its running costs, the Foundation receives a subvention from the European Union's budget. Programme funds are the subject of separate conventions between the Commission and the Foundation. All programme money comes from the Phare and Tacis programmes which are the European Union's assistance programmes for the countries of Central and Eastern Europe and the former Soviet Union respectively. At present, the Foundation has no other source of income. However, provision exists in the Foundation's regulation to manage funds on behalf of other organisations (including bilateral funds from the Member States and third countries). Plans are already underway for the Foundation to manage two such projects, one bilateral; the other multilateral. The Foundation is, in any case, non-profit-making.

In its first year, the Foundation managed around a total of ECU 200 million in programme funds. This included some ECU 125 million for the Tempus programme and about ECU 75 million from the Phare budget for vocational education and training reform projects.

As indicated previously, the Foundation answers to the Financial Controller in the Commission.

Functions

The Foundation has had limited involvement to date in the countries of the Tacis zone, although this is improving slowly. Involvement in Central and

Eastern Europe, on the other hand, has been much more rapid with the Foundation now implementing programmes in all eleven countries.

The Foundation is generally satisfied with its present functions but believes that its expertise could be applied to other regions. In fact, a new area of activity could open up to the Foundation with the possibility of its participation in the implementation of the MEDA programme for the Mediterranean countries. The Foundation's possible role in the programme was announced in the conclusions of the Barcelona conference in November 1995.

Networks

The Foundation considers it important to effect change in the training structures of the partner countries including through the use of networks. Networks can help to influence the transfer of expertise and experience from the European Union to the partner countries. Against this background a number of networks have been, or are in the process of being, established by the Foundation:

- the Advisory Forum involving training experts from 40 countries as well as the major international organisations involved in the assistance field
- a network of Programme Management Units (PMUs) which manage programmes in the countries of Central and Eastern Europe.
- a network of National Tempus Offices from Central and Eastern Europe.
- a network of key contacts in each of the beneficiary countries identified through the Staff Development programme

The Foundation also took the initiative to establish a different kind of network: the informal network of the Directors of the new European agencies.

Problems to date and proposed solutions

The first problem concerns the way in which the budget for the Foundation is decided. The Foundation would like to have a more direct involvement in the preparations of the decision-making process. The present arrangements, particularly the practice of putting funds in reserve, and releasing them late in the financial year run counter to efficiency and prevent proper planning.

The second problem relates to the way in which the Foundation is obliged to follow strict administrative procedures laid down by the European Commission. There is very little room for flexibility in the application of financial, personnel and other administrative procedures. Whilst on the one hand, there are many good reasons for such procedures, on the other hand, a decentralised agency such as the Foundation has little room for manoeuvre to act on content matters which makes it difficult to act quickly and to carry out its

tasks efficiently. This has consequences for the agency's credibility and its ability to satisfy the expectations of the outside world. A balance needs to be struck, therefore, between the need for strict accountability in terms of financial control and accountability and the need to be able to work more flexibly with respect to content matters.

Of course, the Foundation is open to any control which the institutions see fit, provided that it is permitted the professional freedom required for it to carry out its mission. To this end, it is recommended that the agencies be judged on their ability to meet objectives rather than on procedural terms, as tends to be the case. The Commission should endeavour to set more long-term objectives related to the agencies' missions. To sum up, the Foundation believes that it should:

- be set clearly defined objectives related to its mission
- have a more flexible administrative regime
- be subject to strict monitoring and evaluation procedures, particularly regarding finance.

More generally, there needs to be recognition that the agencies are different from the Commission and that being different should not be considered as threatening the existence of the European public service. By promoting a more flexible approach, the Foundation can contribute to improving the image of the European institutions in the eyes of Europe's citizens.

FUTURE PERSPECTIVES

The establishment of the Observatory will have many beneficial effects both for the EU and for the beneficiary countries. Firstly, it will fill a gap by providing expert information on the state of vocational education and training in the East, including identifying examples of good practice and successful strategies. It will enjoy a unique overview of training developments in the East in relation to the reform process. Secondly, it will contribute to the development of a coherent European policy on vocational training and education questions with respect to the countries concerned.

As regards the beneficiary countries, the Observatory will be an important source of information on training policy and practice in the EU Member States. It will be at the centre of a network of national observatories in each of the partner states which will transmit information to the Foundation on vocational education and training questions in their own country. The establishment of

national observatories in each of the partner states, moreover, will fulfil a vital need. The national observatories will collect basic information on vocational education and training questions and provide a basis for policy analysis and research currently lacking in most of the eastern countries. By collecting information on the same basis, the national observatories will permit comparisons to be made on the different national systems and will provide national governments with better tools for taking strategic decisions on vocational education and training questions.

The Foundation will bring added value as follows:

- the establishment of a whole series of networks on vocational education and training matters both East-West and East-East
- the introduction of an increased European dimension to training in the East thus preparing the ground for the accession of the associated countries to the European Union
- the introduction of more diversified and co-operative approaches to planning and delivery of training in the partner countries based on a partnership approach involving all the social partners at different levels (local, regional and national) in line with the needs of the labour market
- transparent information on the state of vocational education and training in Central and Eastern Europe and the former Soviet Union.

It is important to bear in mind that the Foundation is operating in a complex field. Education and training are long-term issues; training systems cannot be transferred overnight. It can take many years to affect the necessary changes in attitudes and values. Legislation has to be accompanied by education in the broadest sense of the word. Changes cannot be imposed and the Foundation cannot insist on a particular training model for the partner countries. Indeed, a fundamental precept of the EU's assistance policy to the countries of Central and Eastern Europe is that the programmes should be demand-driven. Such a policy makes it more difficult to set objectives with regard to desired changes in the training systems of the different countries. This process is part and parcel of the democratisation process in the former communist countries. The Foundation is contributing to this process in ways which are not always easy to measure. Better trained and educated people lead to an overall improvement in the quality of civic life and help to reinforce democratic values. By promoting a partnership approach based on the idea of co-operation and openness and respect for diversity and plurality, the Foundation is making a small contribution to the democratisation process.

HISTOIRE, EXPERIENCE ET FUTUR DE L'OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR (MARQUES, DESSINS ET MODÈLES)

Jean-Claude COMBALDIEU, Président

Mesdames et Messieurs, permettez-moi d'abord de souligner que c'est pour moi une joie, un honneur et une grande responsabilité de pouvoir participer à ce colloque aujourd'hui. C'est une joie parce que, comme vous tous, je jouis du privilège de profiter de cette superbe ville qu'est Florence. C'est un honneur et une responsabilité car je suis au milieu de personnalités éminentes pour traiter aujourd'hui du sujet essentiel des organismes décentralisés de la Communauté européenne. C'est une grande responsabilité pour moi car je sais que certains ne sont pas convaincus de l'utilité ou de l'opportunité de créer de telles agences autonomes. Je suis ici, Mesdames et Messieurs, pour vous expliquer combien l'existence de l'Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) est une réalité essentielle et incontournable pour le futur de la Communauté.

Une des choses qui m'ont le plus marqué depuis que je suis entré en fonction est le fait que toutes les agences communautaires sont mises, par une grande partie des décideurs de la Communauté, dans une sorte de pot commun dans le noir duquel il est difficile de différencier les spécificités de chacune d'elles. Or ma thèse est que l'Office que je dirige est une agence particulière. Pour vous conduire dans ma démonstration, je suivrai le plan qui m'a été suggéré par les organisateurs de ce colloque. Je ferai donc d'abord un historique de l'idée de la marque communautaire et de l'Office communautaire des marques. Ensuite, nous verrons dans quelle mesure l'état actuel des choses correspond aux idées de départ et, enfin, je vous ferai part de notre expérience actuelle et des relations de notre Office avec les institutions communautaires, ainsi que les principaux éléments de notre mise en place.

I. HISTORIQUE DE L'INITIATIVE COMMUNAUTAIRE POUR LE DROIT DES MARQUES

Cette histoire commence avec l'entrée en vigueur du traité de Rome en 1958. En effet, les six Etats membres originaires de la Communauté ont très rapidement décidé d'étudier des mesures d'unification du droit des brevets, des

marques et des dessins et modèles. Les groupes de réflexions qui ont été créés ont débouché sur des rapports dont le contenu et les vicissitudes d'adoption ne méritent pas d'être soulignés ici. C'est en 1973, que la Commission a sorti de ses tiroirs la première mouture pour un système de marque communautaire. En 1976 elle a publié un mémorandum sur la création de la marque communautaire. L'idée de base était, d'une part, de créer une marque communautaire en tant que telle, et donc un titre de propriété industrielle qui viendrait s'ajouter aux titres de propriété industrielle déjà existant dans les Etats membres. D'autre part, afin d'obtenir une harmonisation du droit matériel en matière de marques, la proposition d'une directive communautaire d'harmonisation. Le débat était lancé.

Les propositions formelles ont été adoptées par la Commission en 1980. Il s'agit de la proposition de règlement sur la marque Communautaire. Celle-ci est basée sur l'Article 235 du traité CEE. La proposition d'une première directive sur l'harmonisation du droit de marques des Etats membres, a été adoptée dans le même élan par la Commission. Cette proposition de directive était basée à l'époque sur l'Article 100 du traité CEE. L'adoption par la Commission de ces propositions constitue le vrai début institutionnel d'une discussion longue, difficile, et parfois même décourageante. Mais les efforts déployés par tous ont été couronnés de succès comme vous le savez et c'est pour cela que je suis parmi vous aujourd'hui.

Il faut dire d'emblée que la création de la marque communautaire était indissolublement liée à l'idée d'instituer un Office communautaire des marques. En effet, il est impensable de créer un titre de propriété industrielle qui ne serait pas géré par un Office spécialisé en la matière. Du reste, l'Office Bénélux des Marques constitue un préalable important en cette matière. Si un titre de propriété industrielle vaut pour tout un territoire, il ne peut pas être administré par des Offices différents car ceci suppose nécessairement des pratiques divergentes dans les décisions quotidiennes.

Puisqu'un titre de propriété industrielle doit être géré par une administration, encore faut-il décider laquelle sera chargée de cette tâche. Deux possibilités viennent à l'esprit. La première consiste à créer un Office spécialisé en la matière. L'autre alternative est de constituer, au sein même des administrations centrales, un service spécialisé pour ces questions mais qui reste une partie intégrante de cette administration.

Comme vous le savez, le législateur communautaire a tranché en faveur d'une agence autonome. Cette solution n'a d'ailleurs jamais véritablement été remise en cause. Il faut dire qu'en faisant cela, le Conseil des ministres n'a fait que transposer au niveau communautaire, l'expérience de presque tous les Etats

membres de la Communauté européenne et de la plus grande partie des pays tiers. Il est en effet très rare que la gestion et la délivrance des titres de propriété industrielle soient administrées par l'administration centrale.

Permettez-moi, Mesdames et Messieurs, de rappeler l'expérience française que je connais bien et qui constitue un exemple éclairant. Alors que l'Office de la propriété industrielle français fonctionnait correctement de manière autonome avec son propre budget, il fut décidé, par un décret du 20 mars 1939, au nom de l'unité budgétaire, de réincorporer ce service autonome dans l'administration centrale. Les recettes qui provenaient des diverses taxes en matière de propriété industrielle devaient depuis lors être perçues pour le compte du trésor par un régisseur des recettes et des dépenses.

Cette réincorporation au sein de l'administration centrale constitua le début de la dégradation dans le fonctionnement des services de propriété industrielle en France. Très rapidement, les autorités françaises se sont rendu compte de leur erreur. Dans un rapport remarqué de l'Assemblée Nationale du 7 décembre 1950, le député Jules - Julien analyse l'évolution de l'Office de la propriété industrielle. Ses conclusions sont claires : il faut réinstaurer "un organisme doté de l'autonomie financière auquel seront confiées toutes les tâches d'exécution en matière de brevets d'invention, de marques de fabrique, de registre de commerce et des métiers et de dépôts des actes de société, tâches qui donnent lieu à la perception de taxes". En conclusion, le rapport souligne "que la création d'un institut national qui donnera aux services d'exécution de la propriété industrielle, une organisation adaptée à leurs besoins, permettra de combler rapidement les lacunes actuelles, de moderniser les méthodes de travail et d'adapter l'administration de la propriété industrielle aux nouvelles tâches qui lui seront dévolues. L'enseignement de la période d'avant guerre est concluant à cet égard. De 1920 à 1939, l'Office national a donné entière satisfaction. Au contraire, l'expérience de 1946 à 1950 apporte la preuve qu'il est impossible d'incorporer les services d'exécution de la propriété intellectuelle à une administration centrale". Il est difficile d'être plus direct !

L'adoption par le Conseil de l'Union européenne, le 20 décembre 1993, du règlement n° 40/94, qui crée la marque communautaire et son corollaire, c'est-à-dire l'Office de l'harmonisation dans le marché intérieur, suit la même logique. Personne n'a souhaité que la Commission gère cette marque car ce travail technique n'est pas de son ressort.

II. ETAT ACTUEL PAR RAPPORT AUX IDÉES DE DÉPART

Comme il a été indiqué précédemment, le Conseil a estimé nécessaire de créer un Office véritablement autonome. Les raisons qui sous-tendent ce choix sont résumées au considérant n° 11 du règlement 40/94:

“considérant que le droit des marques créé par le présent règlement requiert, pour chaque marque, des mesures administratives d'exécution au niveau de la Communauté; qu'il est par conséquent indispensable, tout en conservant la structure institutionnelle existante de la Communauté et l'équilibre des pouvoirs, d'instituer un Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) indépendant sur le plan technique et doté d'une autonomie juridique, administrative et financière suffisante; que, à cet effet, il est nécessaire et approprié de lui donner la forme d'un organisme de la Communauté ayant la personnalité juridique et exerçant les pouvoirs d'exécution que lui confère le présent règlement, dans le cadre du droit communautaire et sans porter atteinte aux compétences exercées par les institutions de la Communauté”.

La mise en oeuvre des objectifs qui sont énoncés à ce considérant est prévue au titre XII du règlement qui traite de l'Office. Dans une première section de ce titre, les articles 111 à 118 définissent la structure de l'Office de l'harmonisation dans le marché intérieur. L'Office se voit attribuer la personnalité juridique et la capacité la plus large reconnue aux personnes morales par les législations nationales dans les Etats Membres. Il peut ainsi par exemple passer des contrats de toute sorte sans avoir à demander une quelconque autorisation ou un aval d'une des institutions à condition de rester dans ses missions et compétences.

L'article 111 paragraphe 3 précise que l'Office est représenté par son Président. C'est lui qui dirige l'Office et prend les décisions nécessaires à cet effet. Ainsi, l'article 119 paragraphe 2 a) précise que le Président “*prend toutes les mesures utiles, notamment l'adoption d'instructions administratives internes et la publication de communications, en vue d'assurer le fonctionnement de l'Office*”. Mais le rôle du Président lui permet également de soumettre à la Commission tout projet de modification du règlement de base et des règlements adoptés en vertu de celui-ci (article 119 paragraphe 2 b). Il a donc un rôle important dans l'évolution future du système de la marque communautaire puisqu'il peut suggérer son amendement. On peut également rappeler que le Président est l'Autorité investie du pouvoir de nomination des agents de l'Office (article 119, 2,e). C'est donc lui qui décide des recrutements, sauf pour les membres des chambres de recours et les Vice-présidents qui sont comme lui nommés par le Conseil de ministres sur base d'une liste de candidats établie par le Conseil d'administration.

Parmi les autres caractéristiques essentielles de l'Office en tant qu'organisme communautaire, on retiendra l'article 112 qui prévoit que le personnel de l'Office sera soumis au statut des fonctionnaires des Communautés européennes et au régime applicable aux autres agents. Cette disposition est essentielle puisqu'elle a notamment pour conséquence pour l'Office que celui-ci a la possibilité de "titulariser" les agents qu'il veut garder à son service plus de 3 ans.

Par ailleurs, l'Office s'est vu attribuer un régime linguistique particulier prévu à l'article 115 du règlement. La mise en place du compromis sur les langues a été particulièrement difficile. Deux préoccupations principales et peut être contradictoires devaient être satisfaites. La première est le droit de chaque citoyen de l'Union de pouvoir utiliser sa langue. L'autre est la nécessité de créer un Office qui puisse fonctionner de manière satisfaisante et à des coûts raisonnables. Le besoin de limiter les coûts est plus que la simple idée de ne pas exiger trop d'argent des entreprises clientes de l'Office mais aussi une véritable nécessité car l'Office se trouve en fait en situation de concurrence par rapport aux autres systèmes d'enregistrement des marques. Il s'agit de l'Arrangement et du Protocole de Madrid qui prévoient l'enregistrement international des marques. Or, le système de Madrid n'a que deux langues de travail, à savoir le français et l'anglais. Il a fallu trancher la question des langues au plus haut niveau puisque le Conseil européen de Bruxelles d'octobre 1993 en a été saisi. Selon le compromis en question, les demandes de marques communautaires peuvent être déposées dans chacune des langues officielles de l'Union. C'est à dire, à l'heure actuelle, une des onze langues officielles des quinze Etats membres de la Communauté. Par contre, les langues de l'Office en tant que telles, sont limitées au nombre de cinq: l'allemand, l'anglais, l'espagnol, le français et l'italien.

L'Office ne sera donc amené à dialoguer avec les tiers que dans une de ces cinq langues. Même ce régime linguistique allégé, par rapport au régime linguistique des Communautés européennes, a été jugé trop lourd par certains intéressés. L'avenir dira si nous pouvons effectivement faire de l'Office de l'harmonisation dans le marché intérieur un Office fonctionnant bien et de manière rentable. Pour ma part, je n'en doute pas.

Il y a également lieu de signaler que le règlement prévoit que la Commission effectue le contrôle de la légalité des actes du Président de l'Office à l'égard desquels le droit communautaire ne prévoit pas de contrôle de la légalité par un autre organe. Il en va de même des actes du comité budgétaire institué au sein de l'Office conformément à l'article 133. Ce contrôle de la légalité est essentiel

pour deux raisons. D'abord, en ce qu'il est un contrôle *a posteriori* de nature juridique, il ne remet pas en cause l'autonomie de l'Office. L'opportunité d'une mesure ne peut pas être remise en cause puisque le contrôle de légalité ne porte que sur les conditions juridiques qui peuvent entraîner une annulation. Ensuite, l'existence de ce contrôle répond à une nécessité puisque sans lui certains actes de l'Office ne pourraient pas être soumis au test juridique de leur légalité.

Quant à la structure de l'Office en tant que telle, elle est déterminée aux sections 2 à 5 de ce même titre XII. La direction de l'Office est assurée par un Président qui est assisté, à l'heure actuelle, par deux vice-présidents. C'est cette direction qui effectue la gestion quotidienne de l'Office comme cela a été indiqué ci-dessus.

La troisième section prévoit l'institution d'un Conseil d'administration auprès de l'Office. Celui-ci a pour rôle de conseiller le Président sur les matières relevant de la compétence de l'Office. Il est également consulté avant l'adoption de directives relatives à l'examen des dépôts pratiqué par l'Office. Le Conseil d'administration étant composé en grande majorité par les chefs des Offices nationaux, il constitue un organe privilégié de contact entre la direction de l'Office à Alicante et les directions des Offices nationaux des Etats membres. L'expérience rassemblée autour de la table du Conseil d'administration est, comme vous vous en doutez, considérable. Par ailleurs, le Conseil d'administration est chargé de dresser la liste des candidats pour la Présidence et les vice-présidences, ainsi que pour les membres des chambres de recours.

La quatrième section traite de l'application des procédures. Elle définit notamment les différentes structures administratives à l'intérieur de l'Office telle que, les examinateurs, les divisions d'opposition, la division de l'administration des marques et des questions juridiques, les divisions d'annulations et les chambres de recours. Il faut ici faire une mention particulière pour les Chambres de recours. Celles-ci sont constituées au sein de l'Office mais sont totalement indépendantes quant aux décisions à prendre. Elles peuvent statuer sur toutes les décisions des examinateurs, des divisions d'opposition, de la division de l'administration des marques et des questions juridiques, et des divisions annulations. Ce n'est que lorsque les Chambres de recours ont rendu leur décision qu'un intéressé peut avoir recours au Tribunal de première instance à Luxembourg s'il persiste à estimer que ses intérêts sont lésés.

La cinquième section du titre XII traite du budget et du contrôle financier. Elle mérite un développement particulier. Il faut d'abord rappeler le considérant

numéro 17 du règlement qui résume les objectifs principaux en matière budgétaire pour l'Office. Il indique les raisons pour lesquelles l'Office est autonome sur le plan budgétaire:

“considérant que, en vue d'assurer la pleine autonomie et l'indépendance de l'Office, il est considéré nécessaire de le doter d'un budget autonome dont les recettes comprennent principalement le produit de taxes dues par les utilisateurs du système; que, cependant, la procédure budgétaire communautaire reste d'application en ce qui concerne les subventions éventuelles à charge du budget général des Communautés européennes; que, par ailleurs, il convient que la vérification des comptes soit effectuée par la Cour des Comptes.”

On peut donc constater que le Conseil a souhaité donner une autonomie à l'Office puisqu'il va même jusqu'à utiliser le terme “indépendance”. La mise en place d'un budget autonome est certainement une mesure nécessaire pour garantir cette situation. Il n'en reste pas moins vrai que dans la réalité, notamment parce que l'Office a besoin d'une subvention communautaire importante pour la mise en place de ces différentes infrastructures, cette indépendance est théorique. Nous verrons tout à l'heure que l'expérience des exercices budgétaires passés a largement confirmé cette situation. Il n'en reste pas moins vrai que la 5ème section du titre XII met en place les conditions de cette autonomie budgétaire. Le Comité budgétaire joue un rôle central. C'est en effet lui qui arrête le budget qui comprend également le tableau des effectifs de l'Office. Le Comité budgétaire est donc l'autorité budgétaire de l'Office. Il est toutefois prévu, que pour autant que les prévisions budgétaires prévoient une subvention communautaire, un état prévisionnel préparé par le Président et approuvé par le Comité budgétaire soit transmis à la Commission qui elle-même le répercute à l'autorité budgétaire des Communautés européennes. La Commission peut par ailleurs joindre à cet avant projet de budget de l'Office un avis circonstancié comportant éventuellement des prévisions divergentes.

En ce qui concerne l'exécution du budget de l'Office, le règlement prévoit deux mesures particulièrement importantes. La première est que le contrôle de l'engagement de paiement de toutes les dépenses et le contrôle de la constatation et du recouvrement de toutes les recettes de l'Office sont exercés par un contrôleur financier désigné par le Comité budgétaire. L'Office dispose d'un contrôleur financier sur place à Alicante. Il faut savoir que dans un Office comme le nôtre, le contrôleur financier joue un rôle essentiel. Bien entendu, il contrôle notre régie d'avance ainsi que tous les dossiers qui ont des conséquences financières pour l'Office (ex. actes d'engagement pour les achats; passation de marchés publics; fixation des droits à l'entrée en fonction des agents). Mais il est aussi pour le Président et pour tous les services de l'Office un conseiller indispensable sur toute une série de questions financières

ou de droits du personnel. Il faut d'ailleurs indiquer qu'il est en contact permanent avec les services de la Commission et notamment du contrôleur financier (DG XX). Je tiens à souligner que la présence sur place du contrôleur financier est une nécessité. Du reste, nous avons eu pendant une période l'expérience de devoir passer par les services de la Commission. Les difficultés de communication sont telles que ce système n'est pas viable pour un Office dans lequel le contrôleur financier est amené à viser une cinquantaine de dossiers par semaine en moyenne. La situation est encore pire pour ne pas dire intenable en période de "coup de feu" comme en fin d'exercice. Enfin et surtout, maintenant que nous percevons des recettes quotidiennement c'est des centaines de visas par semaine que le contrôleur va avoir à effectuer.

L'exécution du budget est également contrôlée politiquement puisque le Président de l'Office doit adresser à la Commission, au Parlement européen, au Comité budgétaire et à la Cour des Comptes, les comptes de la totalité des recettes et des dépenses pour l'exercice écoulé. La Cour des comptes joue son rôle conformément à l'article 188C du Traité.

Enfin, il est prévu à l'article 138 du règlement que l'Office dispose de son propre règlement financier qui est arrêté par le Comité budgétaire après avis de la Commission et de la Cour des comptes européenne. Il est expressément prévu que les dispositions financières s'inspirent, dans la mesure compatible avec le caractère propre de l'Office, des règlements financiers adoptés pour d'autres organismes créés par la Communauté. En d'autres termes, le règlement financier de l'Office doit être harmonisé avec celui des autres organismes créés par la Communauté. Il l'est déjà. Ceci correspond pleinement au souci légitime de cohérence exprimé par le Parlement européen. L'Office dispose de son règlement financier depuis un certain temps, puisque celui-ci a été adopté par le Comité budgétaire du mois de juillet de l'année dernière avec l'avis favorable des institutions notamment de la Cour des Comptes.

III. L'EXPÉRIENCE DE L'OFFICE JUSQU'À CE JOUR

La mise en place de l'Office sur le plan réglementaire est une chose. La vie de l'Office, sa véritable entrée en fonction, ses relations avec les autres institutions de la Communauté ainsi que son rôle dans les relations internationales, sont des questions différentes.

1. Relations avec les autres institutions.

Le principal partenaire de l'Office de l'harmonisation dans le marché intérieur est, bien entendu, la Commission des Communautés européennes et plus particulièrement la DG XV chargée du marché intérieur et des services financiers. En fait, ce sont les services de cette Direction Générale, qui après avoir négocié le règlement 40/94, ont fait les premiers pas et les premiers travaux pour la mise en place effective de l'Office. Ce n'est qu'au fur et à mesure que l'Office se constituait que le rôle de cette Direction Générale s'est amenuisé. Tout le monde comprendra aisément, qu'il n'est pas toujours facile pour les personnes qui ont investi un temps et une énergie considérable dans la mise en place d'un système juridique de voir partir leur enfant qui veut devenir indépendant. Si on ajoute à cela que certains des cadres principaux de l'Office sont en fait d'anciens membres de la Direction Générale XV qui ont participé à la négociation du règlement 40/94, on comprendra qu'il y ait une relation très sensible entre l'Office, et en tout cas une grande partie des ses agents, et les fonctionnaires de la DG XV. Je peux dire que tout c'est globalement bien passé.

Il est évident que la bonne connaissance que les uns ont des autres a un côté particulièrement positif. Il ne faut toutefois pas réduire la relation actuelle de l'Office à ces relations humaines entre personnes qui se connaissent. Au niveau institutionnel des relations entre l'Office et les services de la Commission, il y a parfois des difficultés liées à la rupture ou à l'élongation du lien entre le "père et l'enfant". Les services de la Commission, qui s'est battue pour que l'Office soit autonome en tout cas sur le plan administratif, semblent parfois avoir un vrai problème à accepter toutes les conséquences de la politique qu'ils ont mené avec tant de détermination.

Ainsi certains services semblent avoir un vrai problème pour accepter toutes les conséquences de la création de l'Office. Je citerai en exemple le fait que les premiers fonctionnaires qui sont venus travailler à Alicante ont rencontré des difficultés parfois considérables pour obtenir leur détachement. D'ailleurs, un certain nombre d'entre eux ont dû attendre plus d'une année pour que leur situation administrative soit réglée de manière claire du côté de la Commission. En ce qui concerne les fonctionnaires du Secrétariat Général du Conseil, leur détachement n'a été accepté qu'il y a très récemment.

Il faut dire que ces réticences ou ces hésitations ne semblent pas du tout se refléter au niveau supérieur de la Commission, c'est à dire au niveau des Commissaires eux-mêmes. A ce titre, je dois dire que le Commissaire Monti qui est en charge du marché intérieur, de même que le Président Jacques Santer, nous ont toujours donné un soutien sans réserve. Du reste, le Président Santer, lors de sa visite à Alicante à l'Office, a souligné combien il tenait à l'autonomie

des agences décentralisées et notamment la nôtre. Il a dit avec la plus grande clarté, que ce qu'il avait voulu en tant que Président du Gouvernement Luxembourgeois lorsqu'il siégeait au Conseil européen, c'est à dire l'autonomie de l'Office, il le voulait toujours dans sa nouvelle fonction en tant que Président de la Commission. Dans le journal *EUR-OP NEWS* n° 4 (Hiver 1995) il déclarait: *"Avec son autonomie administrative et financière l'Office des marques est la parfaite illustration de cette politique de décentralisation. Il faut dans le futur aller dans cette direction et identifier des domaines spécifiques où une plus grande efficacité peut être obtenue en termes d'administration et de management"*. Cette conviction doit encore descendre la hiérarchie.

En ce qui concerne nos relations avec le Conseil et le Parlement européen, celles-ci sont limitées. On ne peut d'ailleurs pas dire qu'il y ait véritablement une relation entre l'Office et le Conseil ou une relation entre l'Office et le Parlement européen. Toutefois, l'Office participe aux réunions du groupe de travail du Conseil sur les projets de directive et de règlement relatifs aux dessins et modèles industriels.

En ce qui concerne le Secrétariat Général du Conseil, nos contacts se limitent au détachement de fonctionnaires ou, dans un cas bien précis, à la demande que nous avons formulée au Secrétaire Général du Conseil de pouvoir publier dans le *Journal Officiel de l'Office* les déclarations interprétatives adoptées lors de l'adoption du règlement 40/94.

Le Parlement européen, est une institution beaucoup plus multiforme. Nous n'avons pas, en tant que tel, des relations institutionnelles avec lui. Je peux toutefois indiquer que j'ai rencontré le Président Hänsch lors d'une de ses visites en Espagne, et que nous avons eu des contacts avec un certain nombre de parlementaires européens lors du débat budgétaire. Par ailleurs, j'ai participé au mois de mars de l'année dernière à une réunion de la commission des budgets dans laquelle j'ai été amené à expliquer le rôle et la composition de l'Office et à faire valoir nos prises de position en matière budgétaire.

2. Personnel et budget

Comme il a été rappelé tout à l'heure dans le deuxième partie de cet exposé, le Président de l'Office de l'harmonisation dans le marché intérieur a la fonction d'Autorité investie du pouvoir de nomination. C'est lui qui a le pouvoir de nommer agents auxiliaires, agents temporaires ou fonctionnaires des personnes qui travaillent pour son Office. Le statut des fonctionnaires et autres agents s'applique aux personnes employées par l'Office. Nous avons donc une

autonomie de recrutement dont nous faisons usage pleinement. Dans un premier temps, les hauts fonctionnaires désignés par le Conseil, c'est à dire le Président et les deux vice-présidents, ont choisi des collaborateurs parmi ceux qui à la Commission ou dans les Etats membres avaient participé à la préparation de l'Office. Ceux-ci sont donc particulièrement qualifiés. Nous y avons ajouté toute une série de personnes que nous avons recrutées localement et qui avaient les capacités requises pour travailler dans un organisme international. Une grande partie du personnel encore engagé aujourd'hui, est constituée par des fonctionnaires des différentes institutions Communautaires qui souhaitent travailler à l'OHMI. Ces fonctionnaires obtiennent en principe un détachement de leur institution d'origine et sont dans un premier temps engagés sur base d'un contrat d'agent temporaire.

Maintenant que l'Office a commencé véritablement à fonctionner, nous avons procédé, pour le recrutement des examinateurs, qui est la tâche la plus importante à l'Office à l'heure actuelle, à des publications d'annonces passées dans les principaux journaux. Il s'agit d'un véritable concours dans lequel toutefois, nous n'avons pas fait passer des épreuves écrites aux candidats. Je tiens à souligner que l'absence d'épreuves écrites n'est en rien motivée par une quelconque facilité. D'abord, les personnes qui seront recrutées sont des personnes qui effectuent déjà actuellement, dans les Offices nationaux, le travail d'examineur ou qui sont des juristes ou spécialistes des marques dans les Etats membres. Les personnes dont le curriculum vitae est satisfaisant sont convoquées pour une épreuve orale à l'issue de laquelle nous décidons ou non de les faire mettre sur une liste de réserve. Toutefois, les ressources de l'Office étant ce qu'elles sont, il nous est totalement impossible d'organiser un concours sur base d'épreuves écrites et orales. Je souligne ce point, parce qu'il est parfois reproché aux agences d'effectuer des recrutements sur des bases qui ne sont pas très objectives. En ce qui nous concerne c'est tout le contraire. Je dois ajouter que, s'agissant d'un travail très spécialisé (l'examen des marques) l'origine des candidats est parfaitement identifiable dans la mesure où nous avons été de la plus haute exigence en matière de compétence et d'expérience. Il s'agit de critères objectifs et notre indépendance nous a permis de résister à toutes sortes de pressions. Il faut savoir que le système des concours tel qu'il est conçu par les institutions à Bruxelles est un système extraordinairement lourd et coûteux. Si l'on sait que l'Office avait pour 1995 un budget d'un peu plus de 9 millions d'écus, on comprendra aisément qu'il soit totalement impossible pour nous de procéder par ce genre de concours.

Comme il a été dit tout à l'heure, les agents sont d'abord recrutés sur base d'un contrat d'agent temporaire. Mais il est évident qu'un organisme tel que le nôtre ne peut pas fonctionner uniquement sur cette base. En effet, le Statut rend

impossible le maintient dans les services des personnes sur base de contrats d'agents temporaires au-delà d'un certains temps. On a donc soit le choix de renouveler complètement ces effectifs au bout de trois ans lorsque le contrat d'agent temporaire est échu ou alors il faut procéder à la titularisation de ces personnes. Nous avons choisi cette deuxième solution pour les agents qui donnent satisfaction. Ainsi, l'Office aura ses propres fonctionnaires et pourra fonctionner dans la continuité et la sérénité.

Il y a lieu de souligner, que pour ce qui est de nos recrutements, nous sommes extrêmement vigilants et nous faisons particulièrement attention à ne recruter que ceux qui correspondent effectivement aux tâches que nous devons remplir. Ainsi, nous ne recrutons pas à tout va, mais nous attendons de voir le nombre de demandes de marques qui seront véritablement déposées afin de déterminer le nombre d'examineurs que nous allons engager. Ceci nous permet de faire le lien avec les questions budgétaires.

A l'heure actuelle, le budget de l'Office de l'harmonisation dans le marché intérieur est constitué de deux composantes. La première, sont les ressources propres à l'Office qui ne sont rien d'autre que les taxes et autres tarifs que l'Office exige des intéressés lorsque ceux-ci déposent une marque ou lorsqu'ils s'abonnent au *Journal Officiel*. En 1996, selon le budget prévisionnel que nous avons, ces ressources propres devraient être supérieures à la subvention communautaire qui constitue notre deuxième ressource. Mais l'obtention de la ressource communautaire pose bien des problèmes.

Les expériences que nous avons eues pour l'adoption de notre budget pour 1996 sont une longue succession de difficultés. D'abord, notre Comité budgétaire a fixé un montant de subvention communautaire en fonction des besoins. Toutefois, la Commission a baissé de 20% le montant fixé par le Comité budgétaire. Une fois que la Commission s'était prononcée, l'autorité budgétaire a reçu l'avant projet de budget général des Communautés européennes. Dans un contexte budgétaire difficile, le Conseil a, dans un premier temps, fait savoir qu'il souhaiterait probablement encore baisser la subvention communautaire de l'Office. Finalement, il a confirmé, en première lecture, l'avant-projet de la Commission. Par contre, le Parlement européen, en fonction de ses propres priorités politiques, a estimé que le budget des agences en général était trop élevé. Notre budget n'a pas fait exception aux yeux du Parlement européen. C'est là que la difficulté de communiquer avec le Parlement s'est faite jour. Pour nous, la question était de savoir comment nous pourrions expliquer au Parlement européen que nous sommes dans une phase d'investissement et que sans des investissements maintenant il ne serait pas possible à l'Office, peu après, d'enregistrer les demandes de marques comme

cela est son rôle. Or, le fait pour nous de ne pas pouvoir enregistrer des marques signifie que des recettes allaient être perdues. Il nous fallait donc expliquer qu'il nous faut de l'argent pour que nous puissions gagner notre propre argent. En tout cas, nous n'avons pas ménagé nos efforts. C'est un peu comme une usine de voitures qui doit d'abord être construite à la bonne dimension pour permettre la production puis la vente de voitures en nombre suffisant sur le marché. L'Office est une usine administrative.

Ils ont été couronnés de succès en ce sens qu'en deuxième lecture, le Parlement européen a finalement retenu une subvention pour l'Office de l'harmonisation dans le marché intérieur égale à ce que la Commission européenne avait proposé, c'est à dire 16,2 millions d'écus.

Le Parlement a toutefois jugé utile de soumettre un dixième de cette subvention à une réserve. Je voudrais dire quelques mots sur le système des réserves. Autant je comprends que l'autorité budgétaire ou du moins une de ses branches, souhaite avoir un plus grand contrôle sur l'utilisation effective des budgets qu'elle a voté. Autant je dois souligner qu'il est pratiquement impossible pour les personnes qui gèrent effectivement les agences d'avoir une gestion et une administration cohérentes de leurs services lorsque ces réserves sont levées tard ou même très tard. Il faut savoir qu'une réserve de 1 mécus n'a été levée par le Parlement européen que fin novembre de l'année dernière. Je rappelle que 1 mécu constituait une somme considérable pour l'Office puisque le budget total était inférieur à 10 millions. Dans ces conditions, la libération tardive de la réserve a eu comme conséquence que nous n'avons pas pu utiliser tous les fonds comme nous aurions souhaité le faire. Ceci a notamment considérablement retardé le recrutement de toute une série d'agents de l'Office.

L'autre élément qu'il faut souligner dans la procédure budgétaire qui s'applique à l'Office, est qu'il est traumatisant pour nous de vivre des batailles politiques au plus haut niveau dans lesquels nous ne sommes finalement qu'une quantité négligeable qui est balayée de gauche à droite. Par ailleurs, alors que le règlement précise que pour l'établissement du budget l'état prévisionnel doit être transmis par la Commission aux autorités budgétaires avec les commentaires de la Commission, nous nous sommes retrouvés dans la situation où la Commission a préparé son avant-projet de budget comme bon lui semblait et n'a transmis nos prévisions qu'en annexe. Il en est résulté que leur distribution au Conseil et au Parlement européen en a été moindre que prévu. Dans ces conditions, il était presque impossible pour l'Office de défendre son budget qui pourtant était tout à fait légitime et justifié. Une amélioration serait que l'Office puisse présenter son propre projet de budget.

Quoiqu'il en soit, l'objectif de notre Office est de devenir autosuffisant sur le plan budgétaire comme la plupart des Offices nationaux. Je répète ici ce à quoi je me suis engagé auprès de certains membre du Parlement européen: si nous obtenons des subventions communautaires suffisantes pour lancer cet Office de manière satisfaisante, nous serons financés par nos propres recettes dans moins de dix années.

3. Relations de l'Office avec les Offices nationaux et l'Organisation Mondiale de la Propriété Intellectuelle

En ce qui concerne les relations avec les Offices nationaux de la propriété industrielle, celles-ci sont excellentes, importantes et régulières. En fait, les Offices nationaux ont joué un rôle essentiel dans la définition de la marque communautaire lors des négociations sur le règlement du Conseil. Par ailleurs, ces Offices nationaux gardent un rôle prédominant puisque ce sont généralement eux qui envoient à l'Office des représentants au Conseil d'administration. Du point de vue du fonctionnement de système de la marque communautaire, les Offices nationaux ont également un rôle à jouer. Ils constituent d'abord des offices décentralisés auprès desquels il est possible de déposer des demandes de marques communautaires. En d'autres termes, un demandeur de marque n'est pas obligé de remettre sa demande directement à l'Office à Alicante, il peut très bien effectuer ce dépôt auprès d'un institut national de la propriété industrielle ou auprès du bureau Bénélux des Marques.

Le règlement prévoit également que lorsqu'une demande de marque a été soumise à l'OHMI, celui-ci transmet une copie aux services nationaux de propriété industrielle des Etats membres afin qu'ils effectuent une recherche d'antériorité dans leurs propres registres nationaux.

De plus l'Office organise des réunions de travail avec les Offices centraux de propriété industrielle des Etats membres, notamment afin de mettre au point exactement les données techniques qui doivent être incluses dans les formulaires ou dans les notes explicatives, ou afin de définir les normes informatives qui seront appliquées pour les contacts entre les points qui constituent ce réseau.

Ces contacts au niveau technique, sont également une nécessité entre l'Office et l'Organisation mondiale de la propriété intellectuelle. Il y a lieu de rappeler que l'OMPI n'est pas seulement une organisation spécialisée des Nations Unies au sens le plus politique du terme, mais son bureau international est surtout un office international d'enregistrement de marques. Or, la marque communautaire devra prochainement être intégrée dans le système international

lorsque la Communauté aura ratifié le Protocole à l'arrangement de Madrid sur l'enregistrement international des marques.

Toutefois, la question des relations internationales est particulièrement sensible au niveau communautaire. La Commission européenne estime être investie d'un monopole des relations avec les Nations Unies et les organisations spécialisées de ce système en vertu de l'article 229 du Traité CE. En conséquence, la définition du rôle de l'OHMI dans les relations avec l'OMPI, a fait l'objet de quelques malentendus et difficultés avec les services de la Commission. Finalement, des contacts répétés et une bonne volonté mutuelle nous ont amenés à des solutions qui seront satisfaisantes pour tout le monde. L'Office pourra participer dans la délégation de la Communauté européenne ou de la Commission selon le cas, lorsque des questions traitant des marques seront abordées au sein de l'OMPI.

IV. CONCLUSION

Je pense que la mise en place de l'agence spécialisée que constitue l'Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) était une nécessité incontournable pour la Communauté à partir du moment où celle-ci s'est dotée d'un titre de propriété intellectuelle particulier. Bien entendu, ce type de décentralisation, qu'il y a d'ailleurs plutôt lieu d'appeler une déconcentration, ne va pas sans poser des problèmes de départ. Une structure nouvelle comme notre agence, doit trouver sa place et se faire accepter par les institutions préexistantes. Je ne doute toutefois pas que nous trouverons notre juste place et que nous serons acceptés pour ce que nous sommes par les institutions préexistantes. L'existence de l'Office n'est pas et ne peut pas être une menace pour l'équilibre institutionnel existant. L'Office répond simplement à la création nouvelle que constitue la marque communautaire et bientôt, j'espère, les dessins et modèles industriels. Aucun autre moyen pour gérer cette marque n'eut pu être aussi efficace et conforme aux intérêts de la Communauté européenne et de ses entreprises qu'un office autonome qui sera, dans moins de 10 ans, complètement autofinancé.

AN ADMINISTRATIVE PERSPECTIVE FROM THE COMMISSION

Niels AHRENDT, Secretariat-General, European Commission

I. The relation between the Commission and the Agencies

Role of the Secretariat General in relation with the new Agencies

Other horizontal Services have a certain role in relation with Agencies.

The formal link and the main contact points between the Commission and each Agency

II. Commission's motives and reasons for the establishment of decentralized Community Organizations

The time - End of the '80's, beginning of the '90's.

A pragmatic approach and ad hoc process

Motives and reasons

III. The new Agencies

- more differences than common functions
- Misled if we regard the new Agencies as a more or less homogeneous group with a common set of motives and reasons for their establishment.

Four different groups of Agencies in which to place the existing 8 + 2 Agencies.

<p>1</p> <ul style="list-style-type: none"> . European Agency for the Evaluation of Medicinal Products . Office for Harmonization in the Internal Market (Trade, Marks and Designs) . The Community Plant Variety Office 	<p>Own resources/Self-financing Conformity and notification of product, etc.</p>
<p>2</p> <ul style="list-style-type: none"> . European Environment Agency . European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA) 	<p>Central for collection and dissemination of information, extra Union, "Regulation by information"</p>
<p>3</p> <ul style="list-style-type: none"> . European Foundation for the Improvment of Living and Working Conditions . European Centre for the Development of Vocational Training . Agency for Health and Safety at Work 	<p>Tripartite Instrument for bringing the social partners together in a closer collaboration</p>
<p>4</p> <ul style="list-style-type: none"> . European Training Foundation . The Translation Center for Bodies of the European Union 	<p>Subcontracting from other Institutions Commission, Agencies, etc...</p>

When we reach the time to make an evaluation of the experience and value added of the Agencies that evaluation will first be made for each Agency on its own merits.

IV. Experience and Future

LES AGENCES EUROPEENNES: PERSPECTIVE JURIDIQUE DU CONSEIL

Antonio SACCHETTINI, Directeur au Service juridique du Conseil

1. En répondant le 18 décembre 1995 à une question écrite portant sur les "Organismes communautaires, notamment organismes décentralisés"¹, le Président Santer indiquait qu'*"il est peut-être utile de préciser que les agences (de première et deuxième génération) ont été créées pour effectuer un travail technique, scientifique ou de gestion bien précisé dans leurs actes constitutifs."*

Les actes auxquels il est fait référence dans leur ensemble étant les dix règlements par lesquels les organismes actuellement existants ont été institués, la subdivision entre organismes "de première" et "de deuxième génération" semble reposer sur une distinction de nature juridique relative à des entités créées par le traité lui-même d'une part, par des actes fondés sur celui-ci d'autre part. Quoi qu'il en soit, cette distinction juridique est pertinente afin de mieux caractériser dans leurs différents aspects institutionnels les organismes dont il s'agit.

2. Même s'ils sont indiqués avec des dénominations variées (agence, office, fondation, observatoire, centre), ces organismes ont tous la même nature juridique et ne doivent dès lors pas être confondus avec certaines entités créées par les traités communautaires d'une part et avec certains services de la Commission d'autre part.

On rappellera en ce qui concerne la première catégorie la Banque européenne d'investissement (art. 4 B et 198 D du TCE), l'Agence d'approvisionnement de la CEEA (art. 52 par. 2b), l'Institut monétaire européen et la Banque centrale européenne (art. 109 F, 4 A et 106 respectivement du TCE); quant à la deuxième, l'Office statistique et l'Office d'inspection vétérinaire et phytosanitaire.

3. Certains points communs existent entre les organismes rentrant dans la première catégorie qui vient d'être rappelée et les "agences européennes" qui font l'objet de la présente conférence.

Comme les premières, celles-ci sont régies par le droit communautaire. Elles constituent des organismes de droit public distinctes de la Commission et, comme il est indiqué ci-dessus, sont chargés d'un travail technique, scientifique,

¹ J.O.C.E. C 56/96, pp. 60-61.

ou de gestion bien spécifique. Les "agences" (comme les entités visées à la première catégorie du paragraphe 2 ci-dessus) sont dotées de la personnalité juridique la plus large reconnue par les Etats membres. D'une manière générale, elles connaissent une structure caractérisée par la présence d'un conseil d'administration, dont la composition est fixée par le règlement portant création de l'organisme dont il s'agit² et d'un directeur exécutif qui est le responsable légal du même organisme.

Des différences existent parmi les différentes "agences" quant aux dispositions applicables à leurs budgets et à leur personnel, comme il sera indiqué plus avant.

4. La liste des organismes décentralisés reprise dans la réponse à la question écrite reprise à paragraphe 1 ci-dessus est la suivante (dans l'ordre chronologique de leur création):

1. Centre européen pour le développement de la formation professionnelle (CEDEFOP) (Règlement N° 337/75 du Conseil, *JO L 39/75*).
2. Fondation européenne pour l'amélioration des conditions de vie et de travail (Règlement N° 1365/75 du Conseil, *JO L 139/75*).³
3. Agence européenne pour l'environnement (Règlement N° 11210/90 du Conseil, *JO L 120/90*).
4. Fondation européenne pour la formation (Règlement N° 1360/90 du Conseil, *JO L 131/90*).⁴
5. Observatoire européen des drogues et des toxicomanies (Règlement N° 302/93 du Conseil, *JO L 36/93*).⁵
6. Agence européenne pour l'évaluation des médicaments (Règlement N° 2309/93 du Conseil, *JO L 214/93*).
7. Office de l'harmonisation dans le marché intérieur (marques, dessins et modèles) (Règlement N° 40/94 du Conseil, *JO L 11/94*).

² Des représentants des Etats membres et de la Commission ainsi que, exceptionnellement des personnalités désignées par le Parlement européen, font partie du conseil d'administration.

³ Modifié par les Règlements N° 1131/94 (*JO L 127/94*) et 354/95 (*JO L 41/95*).

⁴ Modifié par le Règlement N° 2063/94, *JO L 216/94*.

⁵ Modifié par le Règlement N° 3294/94, *JO L 341/94*.

8. Agence européenne pour la sécurité et la santé au travail (Règlement N° 2062/94 du Conseil, JO L 216/94).⁶
9. Office communautaire des variétés végétales (Règlement N° 2100/94, JO L 227/94).
10. Centre de traduction des organes de l'Union européenne (Règlement N° 2965/94, JO L 314/94).⁷

5. On observera à titre de rappel historique que les organismes qui viennent d'être mentionnés ne sont pas les seuls qui ont été institués par des dispositions adoptées en vertu du traité; en 1973, le Règlement N° 907/73 du Conseil a institué un Fonds européen de coopération monétaire ayant pour objectif de contribuer à la réalisation par étapes, entre les Etats membres de la CEE, d'une union européenne économique et monétaire;⁸ en 1981, le Règlement N° 3245/81 du Conseil a créé une Agence européenne de coopération destinée à faciliter les tâches confiées à la Commission en matière de coopération avec les ACP, notamment en ce qui concerne la question du personnel recruté à cet effet.⁹

Ni l'un ni l'autre de ces règlements n'ont été abrogés à ce jour.

6. A une exception près¹⁰, l'ensemble de ces règlements a été adopté par le Conseil sur la base de l'article 235 du traité. Le recours à cet article exige que les trois conditions suivantes soient remplies:

- "une action de la Communauté apparaît nécessaire" (le caractère nécessaire de l'action est soumis à l'appréciation politique du législateur communautaire),
- "pour réaliser, dans le fonctionnement du marché commun, l'un des objets de la Communauté",
- "sans que le traité ait prévu les pouvoirs d'action requis à cet effet".

⁶ Modifié par le Règlement N° 1643/95, JO L 156/95.

⁷ Modifié par le Règlement N° 2610/95, JO L 2678/95.

⁸ JO L 89/73.

⁹ JO L 328/81.

¹⁰ Le Règlement N° 1210/90, relatif à la création de l'Agence européenne de l'environnement est fondé sur l'article 130 S du traité CEE.

On observera que les objets de la Communauté s'identifient dans une large mesure à la mission de la Communauté (article 2 du traité) et à l'énumération de l'article 3, auxquels il convient d'ajouter les objectifs spécifiques définis à certains articles du traité, voire les objectifs découlant du système du traité pris dans son ensemble. L'existence de "pouvoirs d'actions" repris à l'effet voulu faisant défaut sauf quant à l'Agence européenne de l'environnement - où ces pouvoirs sont accordés par l'article 130 S du traité - l'article 235 a été retenu comme base juridique des différents règlements.

On rappellera que dans deux cas le Conseil s'est écarté à cet égard de la proposition de la Commission: il s'agit de l'Agence européenne pour l'évaluation des médicaments, pour la création de laquelle la Commission avait proposé un règlement fondé sur l'article 100A du traité CEE, et de l'Office européen pour les obtentions végétales pour lequel la Commission avait envisagé dans sa proposition l'article 43 du même traité.

Quelles qu'elles soient, les opinions juridiques à cet égard¹¹, la question paraît désormais tranchée par la jurisprudence au moins quant au domaine de la propriété intellectuelle à la suite de l'arrêt de la Cour en date du 13 juillet 1995 dans l'affaire C-350/92 (Royaume d'Espagne contre Conseil), aux termes duquel:

"...la Communauté dispose... d'une compétence d'harmonisation des législations nationales au titre des articles 100 et 100 A et peut se fonder sur l'article 235 pour créer des titres nouveaux qui viennent se superposer aux titres nationaux, comme elle l'a fait avec le règlement sur la marque communautaire..." (paragraphe 23).

7. Des questions spécifiques se sont posées à l'égard des "agences" faisant l'objet de la présente conférence dans trois domaines particuliers: le budget, le statut du personnel et le lieu d'implantation (site).

- a) Lorsque le Conseil crée un organisme communautaire doté de la personnalité juridique, deux solutions sont possibles sur le plan budgétaire:

¹¹ On rappellera que l'article 100 A en tant que fondement juridique du Règlement 2309 (Agence) a été écarté sur la base de la constatation que le système centralisé d'évaluation des médicaments et la création d'une Agence ne relevaient pas d'un rapprochement des législations nationales et que la création d'un Office communautaire des variétés végétales et d'un régime de protection communautaire dans ce domaine ne constituait pas une action de politique agricole commune.

- l'intégration dans le budget général des Communautés des recettes et des dépenses de l'organisme en cause,

ou

- la création d'un budget propre de l'organisme, distinct du budget général.

La deuxième solution a pour conséquence que l'acte communautaire portant création de l'organisme doit contenir des dispositions budgétaires autonomes.

La première solution a été retenue pour le CEDEFOP, la Fondation pour l'amélioration des conditions de vie et de travail et l'Agence européenne pour l'évaluation des médicaments. On remarquera que, parmi les différents organismes faisant l'objet de la présente conférence, l'Agence européenne pour l'évaluation des médicaments et l'Office de l'harmonisation dans le marché intérieur disposent de recettes propres.

- b) Les dispositions applicables au personnel des organismes dont il s'agit peuvent également être distinguées entre les deux régimes suivants:

- fixation de dispositions à titre autonome

ou

- renvoi à l'application du statut des fonctionnaires des Communautés européennes.

Le premier régime a été appliqué dans une première période par le CEDEFOP, la Fondation européenne pour l'amélioration des conditions de vie et de travail et la Fondation européenne pour la formation.

Un tel régime a donné lieu en cas de contentieux à des difficultés analogues à celles qui ont surgi à l'égard du personnel de la Banque européenne d'investissement. D'une manière analogue à l'arrêt concernant un agent de celle-ci¹², la Cour s'est fondée notamment sur l'application du protocole sur les privilèges et immunités des Communautés européennes au personnel du

¹² Cf. arrêt du 15 juin 1976 dans l'affaire 110/75, John Mills, Recueil, p. 955.

CEDEFOP pour constater que "les agents du Centre sont des agents des Communautés européennes".¹³

Dans un souci d'harmonisation des régimes relatifs au personnel à appliquer au sein des différents organismes, la Commission a proposé en 1994 d'étendre les dispositions du statut des fonctionnaires et du régime applicable aux autres agents aux trois organismes visés ci-dessus. Par son Règlement N° 2063/94 du 27 juillet 1994, le Conseil a adopté une disposition en ce sens en ce qui concerne la Fondation européenne pour la formation.

c) Le nombre croissant d'"agences" créées dans les années 1990 a donné lieu à de sérieuses difficultés quant à leur lieu d'implantation, chacun des différents Etats membres ayant manifesté son intérêt à avoir leur siège sur son territoire. C'est à partir de l'adoption du Règlement N° 1210/90 relatif à la création de l'Agence européenne de l'environnement que, par une formule juridiquement assez critiquable, l'entrée en vigueur des règlements institutifs a été subordonnée à la décision des "autorités compétentes" sur le siège.¹⁴ C'est par leur décision du 29 octobre 1993 que ces autorités, à savoir les représentants des Gouvernements des Etats membres réunis au niveau des chefs d'Etat ou de Gouvernements, ont procédé à la fixation des différents sièges.¹⁵ La fixation du siège de l'Office Communautaire des variétés végétales n'a pas encore été décidée.

8. Comme il a été rappelé ci-dessus, chacun des organismes faisant l'objet de la présente conférence est doté de la personnalité juridique et dispose de certaines compétences. Dans la mesure où l'organisme en question est compétent pour prendre des décisions ayant des effets juridiques, il est indispensable d'assurer la protection des particuliers sur le plan juridictionnel. Les moyens appropriés à cet effet mériteraient de faire l'objet d'une étude approfondie, les compétences exercées par les organismes en question étant de nature différente.

S'agissant de catégories particulières de parties intéressées (les demandeurs d'enregistrement d'une marque ou de protection d'une obtention végétale), des systèmes de recours devant les chambres spécialisées avec recours ou pourvoi devant la Cour de Justice des Communautés sont prévus.

¹³ Cf. arrêt du 13 mai 1982 dans l'affaire 16/81, Alaimo, Rec., p. 1559.

¹⁴ Cf. l'article 21 du Règlement N° 1210/90.

¹⁵ Cf. J.O. E 323/93.

En ce qui concerne les particuliers sur un plan plus général, le problème a une importance relativement limitée à l'état actuel de la législation, les décisions prises par les différentes "agences" ayant, à l'exception de celles de l'Agence européenne pour l'évaluation des médicaments, des effets juridiques limités.

L'attribution d'un pouvoir à la Commission en tant qu'"organe de tutelle" mise à part¹⁶, deux solutions paraissent possibles à cet égard afin de garantir en toute circonstance la protection des droits individuels:

- un système d'"appel" devant la Commission à l'encontre des actes adoptés par les différents organismes;
- un droit de recours devant la Cour de Justice des Communautés européennes.

Le premier système, inspiré de l'article 53, deuxième alinéa du traité CEEA quant à l'Agence d'approvisionnement, a été repris par les règlements instituant le CEDEFOP (art. 18 du Règlement N° 337/75 du Conseil), la Fondation européenne pour l'amélioration des conditions de vie et de travail (art. 22 du Règlement N° 1365/75 du Conseil) et l'Office d'harmonisation dans le marché intérieur (art. 188, par. 3 du Règlement N° 40/94).

L'ouverture d'un droit généralisé de recours devant le Tribunal de première instance ou la Cour de Justice n'est pas actuellement prévue par les règlements régissant les différentes "agences" (hormis bien entendu à l'encontre des décisions des chambres des recours rappelées au début du présent paragraphe).

L'ouverture d'un droit de recours direct devant la Cour de Justice est en revanche prévue, par une modification expresse de l'article 173 du traité instituant la Communauté européenne, à l'encontre des actes d'un organe créé directement par ce traité, la Banque centrale européenne.

9. La croissance du nombre d'"agences" communautaires spécialisées mises en place au cours des dernières années et la constatation de leurs liaisons toujours plus étroites avec les administrations nationales ont amené les auteurs de l'ouvrage: "Europe: l'impossible statu quo" ("Club de Florence") à envisager le renforcement d'une prise de décisions administratives individuelles de la part de ces agences, en faisant allusion à cet égard à un contrôle éventuel de la Commission. La nécessité évoquée ci-dessus d'une protection en toute

¹⁶ Cette solution est celle qui a été retenue pour l'Agence européenne pour l'évaluation des médicaments.

circonstance de droits individuels exigerait au cas d'un tel renforcement un choix entre les deux systèmes mentionnés au paragraphe précédent.

THE FUTURE OF EUROPEAN AGENCIES: A BUDGETARY PERSPECTIVE FROM THE EUROPEAN PARLIAMENT

Laurens JAN BRINKHORST, Member of the European Parliament, General
Rapporteur for the 1997 Budget

I am pleased with the initiative which Florence has taken and I think it is a very good sign that so many of the directors of agencies are present here today. I was asked to come and speak specifically from the Parliament point of view. Before I shall concentrate on the things which are ahead of us, let me look at things a little bit from a distance. As someone who has worked for a number of years to achieve the European Environment Agency, the idea of a hidden aspect of sort, of trying to get control by the Commission behind the backs of the Member States is really very funny. It took about five years before the Member States could agree on the seat of this Agency, although they themselves had actually created it after only three months' discussion in the Council of Ministers. So, sometimes xenophobia is not only fed from within the Community, but also from outside the Community. That's one small point that I can make.

It is very appropriate to have this discussion at this time, because the pattern of development of the European agencies corresponds very much to the overall period of review of the Community structures. Within a few weeks, we shall start the IGC, we shall start the experiment which for the next year and a half will occupy a lot of Europeans on what is the future shape of Europe. To a certain extent, the exercise in which you have been engaged today and yesterday is an element of the overall cultural change of the bureaucracies in Europe as a whole. Words like transparency, more legitimacy, more control, are not limited, of course, to the agencies. They have to do with the overall pattern of how we organize our institutions, now and in the future. I feel that what Mr. Ahrendt said is correct, we are approaching a new era.

Although the United States, of course, remains an important element in our thinking, there are so many major differences in the way the United States is organized and the way we are organizing ourselves, that I would be wary of putting too much emphasis on comparisons. Just to take one example, the European Community structures, the bureaucracies in Brussels, still, after about forty years, employ no more than 15,000 to 20,000 persons. This is approximately the bureaucracy of a middle-sized town in Europe. You can, in no

way, compare that with the hundreds of thousands of U.S. federal employees. By its very nature, the organization of Europe has to depend much more on the cooperation of national structures than on separating European from state structures. The American administration, as Dehousse pointed-out, is largely based on the idea of division of powers, between state organs and federal organs working in the States. We have no federal organs working in the states, except in terms of the agencies, which are not very relevant in overall bureaucratic terms. I wish that those who have said that this is a take-over bid by the European Commission would show a little bit more understanding about what really happens on the ground.

Having said that, we have to deal with major new openings and initiatives. The origins of these agencies can be seen already in Article 8 of Euratom, which speaks of a joint nuclear research centre. At the time, the question was: shall it have a legal personality or not? Finally it was decided that it should not and it developed into the joint research center, which is sitting in Ispra, working for the past forty years as a Service to the Commission. The Statistical Office and the Publications Office were always seen as institutions of the Commission. If they were to be decentralised, the data would be removed from the centre of decision making in Brussels itself. So the whole question of dependence and independence has been with us for a long time. The originality and the novelty is perhaps that since 1990, we have suddenly had a proliferation of a number of new agencies, but for CEDEFOP and the Dublin agency, which were created in the mid-70's and already had some experience in a previous phase.

Now, let me come to the European Parliament. The Parliament was relatively late in reacting to this new phenomenon. In 1992, a number of years after the first agencies of the second generation were created, there was the first report, Mrs. Theato, Chairman of the Budget Control Committee, said we really needed to look not only at each of the individual agencies, but also at the overall structure. This is important from a legislative and budgetary point of view. Between 1987 and 1992, between the Single European Act and the Treaty of Maastricht, the powers of the Parliament, in legislative terms, were very much limited to the internal market. We were still living "the last phase of the conspiracy of the initiated". We were living in the period between 1987 and 1992, when the Commission was at the heights of its power and still believed it could do without Parliament, helped to a certain extent by developments in the Council. So each time the Parliament proposed certain elements of democratization and control in these regulations, the Commission and the Council decided otherwise. But we are now living in a different world. So, by 1992, when Maastricht had been

negotiated and the co-decision was granted to a much larger extent, there was a decision on the overall approach to these agencies. It took until 1995, however, before the Parliament actually woke-up and said: we will not grant any financial powers to these agencies, we will not inscribe them into the budget unless we have more clarity about a number of specific points. That is where the whole question of the "reserve" came in. The agencies here know that, in budgetary terms, they fall under the so-called non-compulsory expenditure. This non-compulsory expenditure part, which is about fifty per cent of the overall budget, is finally determined by the Parliament. The Parliament can, therefore, use its power over non-compulsory expenditure, in a certain sense, to re-orient the budget.

Putting on a reserve means no more that power allotted to these agencies will be subject to control, reports, and discretion over what is happening with them. In that sense, I hope that our friends from the agencies here will realize that this is a fundamental way of deciding democratic control, in a period in which an overall review of the EU institutions is taking place. With respect to the scope, when this is done and under what conditions, the fundamental point is that in a period of uncertainty, in which the growth of institutions is still taking place, putting things on reserve is actually a way to get more transparency. This is, after all, a development linked with the overall development of the current structures. I am very sorry that Mr. Tappin, who was the Budget Rapporteur for the agencies for last year, is not here, but I am sure that before we will establish the budget for 1997, he will see the agencies. I promise this to you and I will report this to Mr. Tappin. The budget line for 1995-96 was a watershed, because, for the first time, the power of the Parliament concentrated on these agencies, not in an incidental way, looking at the individual agencies, but from an overall horizontal point of view.

Two specific points which were requested in an earlier phase, and which the Commission and the Council have always neglected, are to have: a) more harmonization of the financial regulations of these agencies, and b) more harmonization of the budgetary aspects of these regulations. Because these regulations were established as legislative orders at a stage when the power of the Parliament, in legislative terms, was limited, the only way forward was to use the power of reserve.

There are quite significant discrepancies in the various agencies in terms of the discharge procedure. The European Parliament, under its power under Article 206 of the Treaty, gives the discharge to CEDEFOP in Thessaloniki, and

to the Foundation in Dublin. Most of the others, with the exception of the Trade Mark Office and Alicante, have the discharge procedure by the management board. So the question is: why and under which conditions should the management board, which by itself is an organism dependent basically on the Member States and one or two representatives of the Commission, have that power? The second major difference is in the composition of the internal organs. The management boards may or may not have representatives of the Parliament. The latter institution most nearly represents what I would call civil society. This is a way of opening-up these agencies, lest they become too much bureaucracies. The general reserves which are now linked to the budget of 1996 should all be released. I think there is a large consensus in the Parliament about this. The Commission should come forward with a proposal to harmonize these various elements, at least to indicate which harmonization should take place, as agreed in our last trilogue with the Council. The trilogue is an institutional arrangement between the Commission, the Parliament, and the Council in order to better solve problems of a political nature. This trilogue reached the conclusion that we will have a proposal by the Commission coming forward. The reserve is not put into the budget to make the running of the organizations a nuisance. Obviously, for the directors here and their staff who have, quite rightly, the view that "this is my organism and I have to run it as well as I can", it is sometimes a complication. But I think you have to weigh this against the broader perspective of the quest for more transparency, democratization, and legitimacy. So, while this whole question of the discharge procedures and the opening-up of the structures is necessary, this is also an important element. Secondly, the performance patterns of the various agencies also depends on this. The Commission has forwarded a report to the Parliament and we have also made our own analysis of this. I think that in any democracy, in any national structure, it is quite normal that the national parliament reviews the performance of agencies, of the national type, before actual releases take place.

Therefore, one should look in a rather non-dogmatic way at the agencies. Laws are needed to solve the necessary links between national structures and Community structures. Mr. Ladeur just made the point very eloquently, and again I refer to my own experience with the European Environment Agency, that we will not have an environmental policy in the European Union with any chance of developing if we have not a better information system. We will not have this if we do not have more harmonized, more transparent data on a European level. I gather that von Lersner, with whom we worked closely at the time, is here because the federal agency in Germany has made enormous contributions to this whole development as well. Here, I must say to our American friends present,

that if this European agency will succeed, we will have a much better environmental data information picture than exists at this time in the United States, because you don't have anything of this scale in the United States. The EPA, with whom we have had many relations in the past, has never been able to set something up in the European-style.

What, then, is the overall prospect for these agencies? I looked at the European Parliament, we must really now look at the agencies, which, after 1996, are more or less approaching cruising speed. Any budgetary authority which has provided to the agencies an overall increase of about thirty per cent last year compared to no more than three per cent to the more established institutions, cannot be said to be very over-thrifty. At the present time, the agencies have budget loads together equaling about 180 million ECU. We are now in a phase of a European Community which has to reach the Maastricht criteria, and that also, obviously, will have considerable impact on the structures of the agencies in the future.

Let me just summarize a number of the points at which we will be looking in the coming period. In the first place, obviously, the agencies must have the means to operate effectively and efficiently within the framework of tasks given to them. Most of the agencies are approaching cruising speed and the idea is that by the end of 1996, they should be fully in operation, with a few exceptions: the Translation Centre in Luxembourg is only starting on a very small scale now, because their structure is still not quite in shape, and the Bilbao Centre is also far from complete. In administrative terms, the Community budget will be quite constrained. Category 5, administrative expenditure, will not grow by more than three per cent. That these constraints should also apply to the agencies, is quite normal. On the average, the budgets of the agencies will not go, after 1997, beyond those of the other big institutions. Granting of the funds will, in the future, of course, (irrespective of self-defined needs, and obviously any good director will define need to be greater than what is actually accepted!) be subject to evaluation by the budgetary authority, both in light of overall needs and from the viewpoint of the individual agencies. This will be examined by the specific budget rapporteur for the agencies between now and the end of this year. Most of the agencies have no external revenues, so they will be fully budgetized and put in the budgetary structure. It is interesting to note, (and we have Mr. Sauer here from the Medicinal Agency in London) that there are agencies which will have some revenues. From the point of view of the European Parliament, these revenues are, by their very nature, contributions to the European Union and should, therefore, appear in the budget of the European Union as a whole. We

have had experience in the past with the European Development Fund, which is a budget totally outside of the European structures. But the view of the future is that all resources of the European Union should be budgetized, and should therefore be in a proper platform. Since this issue has not yet been fully regulated, we are pushing for a proposal by the European Commission on the proper budgetization of revenues for 1996 in order to be able to establish something on this for the first reading for 1997. I am sorry if this seems overly specific, but I have been asked to discuss a few specific items.

Finally, what about the future development of tasks? As budget rapporteur, it is not up to me to make comments on each specific agency. But it is clear that we are in the face of a reshaping of the culture of the Commission as a whole. Every organism and every management consultant you speak to believes that you should shake-up any institution every ten years. The European Commission has not been shaken-up for about forty years. That is what is now being done and what could happen in the coming time.

In any case, it is clear that there is no sort of rule of nature that any agency, established for a particular purpose, shall grow indefinitely in activities and budget. In the case of the Environment Agency, the decision was to review the inspection of eco-label activities. This has been somewhat delayed. The Commission has proposed that it will take a few more years. It is quite clear that review, at some point, will also imply review of financial and budgetary consequences. In the case of the Medicinal Agency, which has a totally different task, once it is up to speed, in theory, all its revenues should be its own. Here developments will be different. So we cannot fix things once and for all. But I'm convinced that the issue of transparency and democratic control is absolutely essential for the credibility of these institutions. Even though, to a certain extent, they fulfill technical and technocratic tasks, they are part of civil society and civil society has been far too absent from European institutions in the last thirty years.

Mr. Rhodes said there are control, steering, and accountability deficits. I think this is one of the reasons we are in the "age between the ages". But, where I depart from him is that, once you create an internal market, you need to have a more common approach, a more common approach on trademarks or on licensing pharmaceutical products. We need to do something about the environment and information about the environment is absolutely essential. The drugs issue, is no more a national responsibility and the national structures are insufficient to cope with this problem no matter what intergovernmental views on

Europe may exist. It is for this reason that networking, coordination, and the combination of approaches is so important.

There are a number of areas where we should look in the future to decentralize. But what remains absolutely essential are the questions of control, of accountability, of steering. No matter how well-meaning you are, certain structures are finally needed to acquire confidence. It will not be Mr. Santer or the Commission who will decide how and in what way your agency will be independent, and you'd better understand that we live in a time where transparency and credibility are no longer granted, but need to be earned.

Of course, the budget is not the only thing, and I hope I made clear that I wish the agencies well. But I do think that the question of a new act based on Art. 235 was the argument of the conspiracy of the initiators. Art. 235 was a way to move the Community forward at a time when the general public was sleeping. It was the theory of implicit powers, that a Council behind closed doors, together with the Commission, could work in a system to do all kind of things which the founding fathers had never imagined. But I believe Art. 235 is dead after the next negotiations. In order not to go back to a structure in which the bureaucrats run the European Union, but to achieve a structure where democracy and control will lead to a new Europe which is indeed more democratic and more transparent, we need to have accountability structures. And that is my final word here. I hope the agency directors understand that.

PART II: NATIONAL EXPERIENCES WITH AGENCIES - LESSONS FOR THE NEW EUROPEAN AGENCIES

1. Professor Giuliano Amato, Presidente dell'Autorità Garante della Concorrenza e del Mercato, Rome and Visiting Professor, European University Institute, Florence
2. Professor Doktor Heinrich von Lersner, Former President of the German Federal Environment Agency, Berlin
3. Professor Martin Shapiro, School of Law, University of California, Berkeley

AGENCIES IN ITALY

Giuliano AMATO

I was supposed to give you some hints on the Italian independent agencies, which might be useful for the new experience of the Community agencies. I don't know if everything will succeed in this connection, but here are my reflections.

I am one of those deeply convinced that many of the new agencies that we are creating in many of our countries, despite their differences, reflect common inspirations and trends of evolution in all of our institutional systems, in the Western world, at least: need of expertise and efficiency, special protection for individual rights of paramount constitutional value, consumer protection, that seems to be a value in itself, and increasing distrust of political decisions in areas that were traditionally political and where today political decisions are perceived as arbitrary. This is one of the points that Majone has been touching upon frequently and is perhaps one of the most important aspects of this new phenomenon. My personal opinion is that these trends will reach the Community sooner or later, and that some of the obstacles that Member States are now posing to the transfer of power to the Brussels level, might be by-passed if, instead of going to that political level, they will go to independent agencies, mostly due to the reason that Majone is focusing upon (the sentiment of protection of the citizens against politicians, through "impartial" decisions).

Having said so, and being, as I am, convinced that independent agencies will go beyond the borders of administrative law, within which they are most frequently dealt with today, and will enter into the sphere of constitutional law, where, up until now, they create more embarrassment than real attention. I must admit that the step-by-step experience which we are having may not justify these conclusions, because it is an experience that seems to be casual. Every agency has its own history, sometimes quite different from the others. The history of Italian agencies is of this kind. Every once in a while something happens which brings about this new creature. At the end, and only at the end, you realize the connections between this creature and others which were created before.

We have, let's say, three waves in our recent history. The first was due to the reform of the stock exchange market twenty years ago with the creation of Consob, the Commission for the Companies and Stock Market, in 1974. In the

creation of Consob, that initially was more an embryo of an independent agency than a really independent agency, the main reason of independence was the fact that the problem to be solved was to take powers out of the different ministerial departments and put all of them into a new box. The unification of these powers plus the introduction of new ones mostly aimed at the transparency of the market, was politically much easier if all of them were bestowed upon a new institution than through the choice, for all of them, of one of the pre-existing departments. The initial Consob, however, had the structure of an agency, it was not part of any ministerial department, but its decisions and regulations were issued under the form of ministerial decrees, decrees of the Minister for the Treasury. Only years after, through new legislative interventions, has it acquired its present status.

The second wave arrived in 1990. Three new agencies were created, the most independent of all, but, incredibly enough, for reasons that were totally different in the three cases. The first one was the Commission supervising strikes in public services, provided for by a statute approved in June and accepted by the trade unions under the conditions that the newly introduced limitations to the "freedom of strike" would not be enforced by the Executive or administrative branches depending on the Executive. This was the platform upon which the Commission was created, with nine members designated by the Presidents of the two Chambers of Parliament and eventually appointed by the President of the Republic. The Commission was totally independent of the Executive and was empowered to regulate its own organisation and activities.

The second agency arrived three month later, in August, with the new statute on public and private TV, that created the Mass Media Authority (*Garante per la Radiodiffusione e l'Editoria*), a single member Authority, appointed through the same procedure as the Commission on strikes: joint proposal of the Presidents of the two Chambers, decree of the President of the Republic. The reasons of the independence are totally different in this case and go back to the peculiar features of the Italian TV system. Initially, we had a public monopoly that the Constitutional Court declared legitimate in the 1960's only if detached from the Executive. The first legislative consequence of the Court's ruling was a statute in the 1970's that transferred the appointment of the TV company's Board from the Executive to the Parliament. Later on, when private TV entered and was legally admitted, Parliament maintained its powers over the State company, but a new Authority was needed to supervise the overall system. This is how and why the "Garante" was created in 1990.

The third agency of this prolific 1990 was the Antitrust Authority, that arrived in October. For years, Italy had been the only founding father of the European Community without a general antitrust law, even though bills on the matter had been discussed in Parliament since the late 1950's. One of the diverging features of these bills involved the nature of the Antitrust Authority: the bill the Cabinet provided for an advisory body (with final decisions by the Minister for Industry), while the bills of the opposition stood for an independent authority. The increasing pressures of the Community after the approval of the Single Act and the rush towards completion of the Single Market forced the Italian authorities to bring their sluggish debates to a positive conclusion. The general antitrust law was eventually approved in October 1990 and provided for an independent authority to enforce the new rules. The Authority has five members, all of them are directly appointed by the Presidents of the two Chambers of Parliament, there is no influence whatsoever of the Executive, that may not even accept questions in Parliament on the decisions of the Authority.

The third and final wave has arrived lately, in connection with the privatisation process: publicly owned companies in charge of public services that are privatized, monopolized markets that become competitive, regulations and regulators for the transition (and perhaps further). It is the same process that we saw in the UK in the 1980's and in both countries the regulators are independent agencies, for well-known reasons that I will not repeat here. What I want to underline as far as Italy is concerned is that the new regulatory agencies created in 1995 are less independent than those of the second wave of 1990. Firstly, they will be appointed by the Executive and not by the Parliament, even though the advise and consent by two-thirds majority of the competent standing Committees of the two Chambers will be required. Secondly, some of their powers will be either shared by the Executives or exercised under its guidelines.

A question that I am supposed to answer is "who opposed the agencies in Parliament?". At the end, almost nobody opposed the three agencies in 1990, that (for different reasons) rallied a wide majority precisely because they were independent and were expected to exercise new powers that nobody was in charge of previously (which reduced the ranks of their enemies). The opposition, instead, rallied more for the new regulatory agencies: certainly one of the reasons was the anti-privatisation stand of some of our parties, but the other was the fact that they were stealing pre-existing powers from pre-existing apparati. This explains the main tension in Parliament between texts providing for a semi-advisory role for these agencies and texts providing for an independent role. The texts and amendments fashioned to favour the semi-advisory role were the fruit

of bureaucrats and, generally, of the Cabinet, and, of course, of some parliamentarians working for them, because of the well-known system of hiding ideas under different parliamentarians.

The final compromise is quite visible in the statute, because, as I have said, besides the appointment power that is shared between the cabinet and Parliament, some of the powers of the agencies are shared between the agencies themselves and the ministerial departments. There has been quite a discussion as to whether or not licences to the companies should be released by the agencies. According to the statute, even though the agencies prepare the decision, the signature of the licence has to be of the Minister, which, in fact, quite clearly reflects this compromise.

How may we systematize all these pieces we now have: the Consob, the regulatory agencies, the anti-trust, the mass media and the anti-strike agencies? I would say, first, that all of these agencies are more than regulation by information. Information, the collecting and distributing of information to the area that needs them, is an essential part of their job, but they also have, and probably need, regulatory powers for the sake of information itself. And this is typical of Consob. Any kind of information that companies are expected to give, to the potential buyers of their shares, to the financial markets, require specific regulations by Consob on the nature of the information, on the fashion in which information is given, with forms, formalities, etc. So, it is difficult to escape this connection between collecting and giving information and having regulatory powers.

A second inevitable power is the power of adjudication, because any time conflicts arise in this area under the jurisdiction of the agencies, somebody has to decide upon them. The agency itself seems qualified for this job with some sort of judicial review, inevitably. But here comes in a difference that is very important. The Antitrust Authority, that I personally chair, enforces not its own rules, but statutory rules, and can only adjudicate, which it does with procedures that are quasi-judicial. As a consequence, we are really far away from political power and, I think, also from administrative law. I do not know exactly to where I belong. I am sure that I belong to public law, I am not sure that I belong to administrative law, as long as administrative law is the law of the branches of the executive power. This issue would lead me far astray here, but it is extremely intriguing.

Third, not all of the agencies are on equal footing. They are different from one another. I would like to be more humble than I might seem, but broadcasting and anti-trust are above the others, not because we are nicer people, but because we are protecting constitutional values and constitutional rights. It is not by coincidence that, by doing so, we are exercising powers and functions that did not exist before the creation of these two agencies. Quite differently, the new regulatory agencies, après the U.K., are exercising pre-existing activities that are being decentralized to them, because privatization and promotion of competitive markets make those activities more neutral and less politically oriented. This is very important, because when we open the chapter of the European agencies, I lean toward a radical position as to the expected, sooner or later, European Cartel Office. Let me say one word on this.

In the area of antitrust, of European antitrust, there is quite a discussion as to whether or not we should ask the Intergovernmental Conference to mandate the introduction into the Treaty of a clause creating a European Cartel Office. There are, at the moment, two open positions about this: one is German, the other Italian. The Germans are insisting more on the creation of this independent office, which is quite natural for those who are familiar with the German culture of independence in this area: Order-Liberals, Franz Böhm, and all the consequent German tradition. But, they propose an amendment to Article 89 according to which the Council should be empowered to create the office. We Italians are more ambitious in the assumption that the new office requires a new allocation of powers inside the Community, that would abandon the principle of concentration of power, which was typical of the Soviet Union, on behalf of Montesquieu and Tocqueville, who thought, quite rightly, that you don't apply the rules that you establish. I am ready to accept that concentration has been essential and will remain essential as long as the integration of the market has not been completed, but one day we will arrive at the end, when this process will be completed. At this point, I would like to see the adjudication power separated from the regulatory powers of the Commission and bestowed upon a European independent office. Therefore, we would be happy to see an amendment of the Treaty which does not delegate to the Council the power to create such an office, but which directly provides for the institution of it and empowers it to enforce Articles 85, 86, and 90 paragraph 2 (90 paragraph 3 has to remain to the Commission, because it concerns directives and regulations). Wasn't this so when the European system of central banks was created a few years ago?

THE GERMAN FEDERAL ENVIRONMENTAL AGENCY

Heinrich VON LERSNER

I.

I am very grateful to you for giving me the opportunity to speak here about my experiences as the founder and, for 22 years, the head of the Umweltbundesamt (UBA), the German Federal Environmental Agency. Since, for a number of years, I had also been a member of the European Environment Agency's Management Board, I know which of our national experiences can and which cannot be applied to the UBA's European counterpart. Nevertheless, I will refrain from addressing this point and leave it up to you and the subsequent discussion to draw relevant conclusions.

The UBA's founding in 1973/74 came from the realization that there is probably no other policy area so dependent on scientific findings as environmental policy, dependent on the findings of a whole range of scientific disciplines which must be pieced together. The approximately 600 academically trained members of the UBA staff (of a total of 1,300) represent nearly all branches of science, from biology to jurisprudence and from chemistry to economics. The only disciplines missing are theology and archaeology.

II.

The Act by which the Umweltbundesamt was founded provides that it is an independent federal authority whose functions are to provide the government with scientific support and to collect information on the environment, to generate measurement data and to inform the public on these activities. The Environment Ministry, however, exercises administrative and technical control over the Agency.

These rules reflect the state of friction in which any scientific governmental authority is caught. Science is, after all, by definition free of preconditions. It has to explore reality, irrespective of whether the result suits the commissioning party. On the other hand, any government agency is part of the administration

and, as such, is obliged to be loyal to the government and the parliament, which decide what tasks it has to fulfill and which also provide the financial and material resources that enable it to fulfill them. So, those running government agencies are Janus-faced and walk a tightrope. If they lean too far towards loyalty to the government, the public no longer recognizes their proposals as scientific; if they lean too far towards independence, they are excluded from internal governmental and parliamentary negotiations and their proposals carry no greater weight than those of Greenpeace or other environmental organizations.

In practice, this problem of friction between science and politics has been dealt with reasonably well in the last few decades. True, there have been instances where the Agency sent a proposal made on scientific grounds from Berlin to Bonn which was not to the Federal Government's liking. But never has any federal minister forbidden the Agency from making a particular proposal. To be sure, sometimes a proposal was returned to us on the grounds that particular aspects had not yet been investigated or that the available data were not yet sufficient. This happened, for example, to our proposal to introduce a speed limit on motorways; the Government had already decided against it. However, the minister did not forbid us to make the proposal but merely returned it to us saying that some data, e. g. freight transport data, were as yet missing, which was true. Subsequently, the Government initiated a large-scale trial which in fact improved the data base, but it has not yet decided in accordance with our proposal.

This practice is, incidentally, to the Government's advantage as well. If the Agency were only to propose things which suit the Government, the latter could no longer cite our expert opinions to justify measures vis-à-vis the Parliament, which would result in supplying the opposition with a good laugh.

Another potential area for such conflicts are the Agency's publications. Annual reports containing numerous research results and environmental data are published by us on a yearly basis. *Daten zur Umwelt*, an UBA publication with facts and figures on the environment, appears every two years. The Agency is responsible for the contents of these reports. It does, however, submit them to the Ministry prior to publication, which of course, sometimes proposes changes and additions. The usual practice is that agreement is then reached to phrase a particular passage in a certain way. Where in the past no such agreement could be reached, it sometimes happened that the Minister called the President saying that if the disputed sentence were to be retained, he would not be in a position

to present the report to the press jointly with the President, as is customary. Since experience has shown that joint presentation attracts greater publicity, the President would occasionally give in. There have also been press conferences at which a State Secretary dispatched by the Minister to present a report jointly with the President would point out that the report in question did not in all points reflect the Government's opinion (a case in point being the study in which the environmental compatibility of rape-seed oil as diesel fuel was compared to that of mineral oil).

Similar conflicts sometimes occurred when a parliamentary committee invited UBA experts to one of its meetings. The practice in such cases is that we inform the Government beforehand of the contents of our presentation and try to settle any differences that may exist. Failing that, the Government states that it disagrees with some points of the Agency's presentation.

Another rule is of importance when the Agency is invited to *Bundestag* committee meetings or to meetings of committees of *Länder* parliaments. The selection of experts to be sent to such meetings is solely the responsibility of the UBA. There have been instances where the committee that requested UBA's attendance wanted to hear the opinion of a particular person. However, since what matters on such occasions is the Agency's opinion rather than that of an individual expert, the President replies that the host can only determine the subject and that it is up to the Agency to decide which member of its staff is the expert on that subject.

Such conflicts between personal opinion and the Agency's opinion, which it formulates following in-house discussion between the various branches, sometimes also arise when staff members publish their personal opinions. The Agency does not prevent its scientists from doing so, even when these do not reflect the views of the Agency. In such cases, however, they are not allowed to mention the Agency's name in their publication.

III.

I mentioned earlier that the Environment Ministry exercises administrative and technical control over the Agency. What precisely does that mean? Administrative control means first of all that the Ministry is obliged to check whether the Agency's management of personnel and funds complies with pertinent regulations. As for personnel, all hirings and promotions within the category of positions belonging to the so-called higher service are subject to the

Ministry's consent; in the case of some posts, even the Government must give its consent. These are positions that are usually filled by university graduates. An important point, however, is that we have no posts whose holders can be dismissed when there is a change in government or for political reasons. This sets us apart from, for example, the US Environmental Protection Agency, where virtually all personnel in executive functions are replaced when a new administration comes in, with the result that it often takes a whole year until there is a competent person whom one can contact. The traditional German Civil Service with tenure not only has the advantage of greater continuity but also that of greater independence in matters falling within a given area of responsibility. When Agency directors such as the president, the vice-president, or department heads are recruited, our Ministry of course also strives to acquire individuals whom it can trust. When, for example, the Agency proposes someone as head of a department, that person also has to be interviewed at the Ministry. However, the Government has never filled such a post with someone whom the President considered unsuitable; the worst that can happen is that of two suitable candidates proposed by the Agency, the candidate whom the President ranked second is chosen.

As for control in financial matters, a distinction has to be made between projects which the Agency itself carries-out with its own resources and projects carried out on its behalf by external institutes or companies. In the case of the former, the Ministry merely has to check whether the Agency manages the funds properly and sticks to its work programme. By contrast, in the case of R+D projects awarded to external institutes and companies, the Ministry provides the funds. Based on a research plan drawn up on a yearly basis, the Agency proposes a project to the Ministry, the Ministry approves it (or does not), and the Agency is then responsible for commissioning and supervising it as well as for spending the funds on behalf of the Ministry. Even though the funds provided for such projects have decreased markedly in the last few years, they still amounted to no less than approximately DM 50 million in 1995 (1992: DM 77 million). These funds are of great importance to industrial innovation in particular, because by using them it is often possible to break down what can be referred to as anti-innovation cartels. It may occur that the companies of a given sector agree that none of them make the next step towards environmental improvement because if one of them does so successfully, this more eco-friendly process is considered the "state of the art" under German environmental legislation, with the result that the other companies have to use it as well. In such cases, investment subsidies provided by the Agency (of up to 50%) can sometimes entice a company into attempting to make the next step.

Here, the Ministry is also quite influential since the money comes from its budget and not from the Agency's. The Agency works for the Ministry of Research in a similar manner.

IV.

Technical control by the Ministry is also important in areas where the Agency fulfills administrative functions on behalf of the Federal Government - functions, I may add, that have not yet been, but may some day be, assigned to the European Environment Agency. In most cases, it is the *Länder* (federal states) that are responsible for enforcing environmental legislation, and the Agency has no authority here to issue directives to the *Länder* authorities. It can only give advice. If a *Land* does not properly enforce a federal act, the UBA can only suggest to the Federal Government that this act or an ordinance issued thereunder be amended, or it can bring the problem up for discussion at the *Umweltministerkonferenz* (conference of federal government/federal states ministers for the environment).

It is mainly substance-related legislation for which the Agency fulfills enforcement functions of its own, i. e. in supraregional matters. Thus, for example, it participates in authorization and similar procedures under pesticides, genetic engineering, chemicals and detergents legislation. UBA's consent is required when a plant protection product is authorized by the responsible authority, which belongs to the Federal Ministry for Agriculture. Even though our Ministry exercises technical control over the Agency in this respect, it cannot direct us to consent to the authorization of a particular plant protection product because it is the Umweltbundesamt, and not the Ministry, who must give its consent.

Germany is - as you know - a country with a federal structure, and its constituent states, the *Länder*, are usually reluctant to relinquish administrative competencies to the Federation. Especially in the field of environmental protection, however, the *Länder* have been known to occasionally hand tasks over to the Umweltbundesamt, particularly in cases where their respective views differed greatly or where the topic at issue was unpopular. The comparison of the environmental impact of waste incineration and that of waste disposal without prior incineration is a case in point.

It would, in my view, be desirable if we in the European Union were soon to be in a position to assign administrative functions to the European Environment

Agency in certain cases, particularly in areas where freedom of trade necessitates the use of harmonized procedures. Given our experiences with roaming wastes and also with transboundary water pollution, the Agency should be empowered to convene task forces with the authority to also instruct national bodies to initiate emergency measures or to propose such measures to the Commission.

V.

An area in which the UBA's scientific independence is of great importance, also in political respects, is the publication of environmental data. In democratic systems, the regular publication of data carries great political weight for it allows politicians and voters alike to see whether the government has reached its goals and kept its promises. Any student can be shown the political importance of a regular publication of data by a comparison of the two German states prior to 1990. In East Germany - the German Democratic Republic - environmental data were declared a state secret in 1980 so that often not even the very polluters knew what damage they had done. In democracies, regular publication of environmental data means having already traveled half the distance to success.

It is also important that government agencies not be prevented from publishing politically undesirable data and research results. Science lives off the publication of its results as the human body lives off oxygen. Esoteric lore runs the risk of suffocating. Of course, the Agency I headed also receives confidential industry data. If we were to publish them we would no longer get them, particularly such data as industry is not required to disclose. Here, we often managed to arrive at a compromise such as that the data were rendered anonymously or were aggregated.

The Council Directive of 1990 on the freedom of access to information on the environment (90/313/EEC) has helped us a good deal here, for especially in Germany, willingness to divulge information is less developed than in other European countries.

A prerequisite for the publication of data by any government agency is, however, that it is independent of economic interests. After all, anyone with experience with statistics knows how much they can be manipulated. "Everyone lies with their own statistics" is a slogan commonly heard not just from ecologists. Which substances do we include in our statistics, at what

monitoring stations do we measure them, and to what do we relate them? If national sulphur emissions are related to square metres of national territory, the signal would be green for Spain and red for Germany. The situation is reversed if they are related to the number of inhabitants or the gross national product, which is why Spain, understandably, uses the former alternative when it publishes its national data. You can see from this example how important it is for any environmental authority to be economically and politically independent.

VI.

The situation is similar in the determination of limit values. A widely held view among the lay public is that limit values are based solely on empirical science establishing the relationship between cause and effect. Just as a German poet called names just hollow words, so are numerical limit values just hollow figures. The decisive factors are sampling, analysis and statistical evaluation, the methods of which are in most cases not established by governments or parliaments but are agreed upon in standardization committees of organizations such as ISO, CEN or, in Germany, DIN. There are examples where a substance extremely hazardous to the environment escaped regulation because the analytical method underlying the applicable limit value required, for example, the determination and multiplication of 6 congeners known to be toxic out of a total of 200. In such a case, a company can declare its product or waste to be free of this substance if the toxic constituents of that product or waste do not include the congeners to be measured. A similar approach is used for dioxins, which gained notoriety in the accident at Seveso, if only for rendering enforcement of the standard practicable. When Great Britain became a member of the European Community, it did not adopt the EC method for detergents because the numerical values of the British method were more stringent even though the method itself was less stringent due to a different measuring technique. This was to prevent the public from getting the impression that one would allow British standards to be weakened by European legislation.

VII.

These examples lead me to another problem faced by scientific government agencies under political control. Where lie the boundaries between science and politics? These boundaries can best be illustrated by the example of what we call eco-balances, or life-cycle analyses, meaning the comparison of different alternatives with respect to their environmental impact. Here too, it is important first of all that the government agency which draws up the comparison avoids

appearing to be influenced by economic or national interests. When I heard of an epidemiological study which found that the life expectancy of people who drink red wine is higher than the national average and asked a well-known epidemiologist what he thought of the study, he replied that it was a good, scientifically sound study, the only flaw being that it was done by the University of Bordeaux. It should have been published in Hamburg (meaning, not in Florence, either!).

The UBA, therefore, asks the members of its staff to refrain from working for companies with an economic interest in environmental issues for remuneration or the provision of any other benefits. The same is true, in principle, for our research institute. It is up to the Agency's directors to consider exemptions in any given case.

As for life-cycle analysis, the boundaries between science and policy-making can be illustrated by the example of the comparison of nuclear energy and energy from fossil sources. It is possible for a scientific government agency to determine and evaluate the risks associated with the two alternatives - the risks posed by nuclear energy in the event of an accident and in terms of nuclear waste, on the one hand, and the risks of fossil energy to the climate and resources, on the other. However, a decision as to which of the two alternatives should be judged to involve the graver risk cannot be made on rational scientific grounds but only on political and ethical grounds.

We have also contrasted the environmental risks of glass bottles for beverages that are refilled and those of plastic beverage containers that are recycled after use. Where such a comparison results in a draw, it is up to policymakers to say that when in doubt, the refillable bottle is to be preferred to the recycled one-way container, as an ethical reminder, so to speak, of the need for a departure from the throwaway society. The situation is similar for the comparison of mineral oil versus rape-seed oil as diesel fuel, which I already mentioned earlier, in the case of which the decision in favour of renewable resources and agricultural policy must be reserved to the political arena.

I know of many examples where scientists anticipated political weighing and where policy-makers, for tactical reasons, burdened science with making decisions which they should have made themselves.

VIII.

Let me summarize the results of my talk in the form of some theses:

1. Where tasks to be fulfilled depend on scientific findings, modern politics have to draw on independent authorities or institutes which present the results of scientific research to the political bodies.
2. Where political decision-making is dependent on the findings of different branches of science, it is important that the representatives of these scientific branches work in the same place so that they can communicate personally on a daily basis.
3. Governmental control over a scientific government agency has to be confined to administrative and financial matters and may not include any preconditions as to the desired scientific result.
4. Also when selecting agency staff, scientific qualification must remain the decisive criterion. Where the scientific government agency is not free to make the decision itself, it has to submit proposals to the governmental body responsible for decision-making, which must then decide solely on the basis of technical criteria. Members of a scientific government agency's staff may not be dismissed on political grounds.
5. The members of a scientific government agency's staff may publish their personal opinions provided that they make it clear to what extent the published conclusions reflect personal opinion and to what extent they reflect the agency's opinion which it formulates upon interdisciplinary weighing.
6. Especially when data are published, it must be ensured that the selection and presentation is not influenced by economic and political interests.
7. When limit values are formulated, it must be possible for policy-makers and the public to see to what extent the analytical method and limit value were derived by scientific deduction and to what extent they are the result of political or methodological conventions.
8. In such proposals, as in others, the government agency must bear in mind the boundaries between science and politics and must attempt not to anticipate political assessment.

IX.

Ladies and Gentlemen, I know that it is difficult to extrapolate these national experiences to European agencies because, in their case, the conflicts of interest are even more complex, from the selection of staff (proportional representation of the member states) to differences in historical, social, ecological and economic conditions in the various member states. Nonetheless, I hope that I have been able to provide a few ideas that may be helpful for the European Environment Agency and other agencies.

AGENCIES IN THE EUROPEAN UNION: AN AMERICAN PERSPECTIVE

Martin SHAPIRO

I am not, in fact, going to give a report on agencies in the United States, as I have already prepared a long written paper which has been published as a Robert Schuman Centre working paper (M. Shapiro, *Independent Agencies: US and EU*, Jean Monnet Chair Paper, n° 96/34, RSC, EUI, Florence). Instead, I am taking advantage of my position on the program to provide a kind of closing statement to address Majone's opening statement. Majone and I are both Political Scientists, we both rely heavily on American experience. I wholeheartedly support the premise from which he begins that information collection, and particularly information analysis, is a form of policy-making. In the current age, an age which we might characterize as that of the politics of information, this is a very central policy-making activity. Mr. Jimenez-Beltran and Mr. von Lersner have also seconded this premise of information as policy-making. Professor Majone goes on from that basic premise to a particular line of logic. I propose to go on from this same basic premise to arrive at the exact opposite conclusions from the ones to which he arrives; that is, to attack independent agencies, rather than prescribe them. Majone argues that the question to be asked is: How can we obtain credible information? His response is through independent agencies. I propose to go on to say that if information is policy-making by independent agencies, we must then ask the question of whether policy-making by independent agencies is a good or a bad thing. We must examine the question of policy-making by independent agencies. Moreover, since these independent agencies are information agencies, and, therefore, expert or technocratic agencies, we must not only ask the question of whether or not independent agencies are a good thing, but whether or not government by technocrats, experts, is a good thing. These questions are particularly pressing because Professor Majone seems to solve the problem of accountability of expert information-gathering policy-makers by speaking of professional accountability. Professional accountability is, of course, the accountability of one set of experts to another set of experts in the same field of expertise. This simply exaggerates the problem of whether government by experts is or is not a good thing. Professor Majone, among others, have promoted networking among these expert agencies. Networking consists of creating transnational communities of experts who are "epistemic communities", in the

current jargon, who resist control by politicians. This is yet another argument for government by experts. Finally, this set of questions about technocratic government is even more pressing, because for many of those concerned with the organization and operation of independent agencies, there is a strong notion that the expert technical staff of the agencies will overwhelm political control within the agencies. That is, since these agencies are defined as expert agencies designed to generate information, they will be agencies in which the internal power will lie with the experts, not with the thin layer of political supervision by their boards of management or other such devices for partial political control.

Let me begin, then, with this critique. Even from the standpoint of gathering credible evidence, I am dubious of the notion that independence creates credibility. I think that what creates credibility is inattention. When the public does not care about something, the information provided by experts is credible. As soon as the public cares about something, the information provided by experts becomes simply another item in the political struggle. As soon as information becomes highly policy-relevant in controversial policy areas, there will be counter-information by other actors. Independent agencies will not, in most instances, be able to assert their independence as a satisfactory block to counter analysis by other groups interested in the same questions.

Let me go on from that credibility issue to the main issues of whether technocratic independent agencies are a good thing or a bad thing in terms of the general problems of government. The first problem is, of course, that of coordination, and Mr. Rhodes has just talked about it. If we piecemeal create a very large number of independent agencies, and if those agencies are really policy-makers, then we will soon discover that we have turned over a substantial segment of the whole of government policy to independent agencies and we will have an enormous coordination problem among them. This problem of coordination among independent agencies is, furthermore, multiplied enormously if the independent agencies are expert agencies, because the hardest people to coordinate are experts. Politicians are easier to coordinate than experts. In the world of modern knowledge, real knowledge comes from extreme specialization. There is just too much to know for us to know very much. Therefore, the expert is by definition an extreme specialist and extreme specialists suffer from the problem that the French call "*déformation professionnelle*". They know more and more about less and less, and, therefore, each tends to have perspectives and priorities that are different from the rest of us who know less and less about more and more. The man who was studying chickens all his life, the chicken expert, is sure that chickens are more important than everything else. The man who has

studied wildlife all his life knows that wildlife is more important than everything else. I defy you to coordinate chicken experts and wildlife experts.

Mr. Rhodes has also referred to the problem of control or accountability. The United States experience with independent agencies is that they have been subject to very strong Congressional control, contrary to the impression that usually is left abroad. The Congressional committees control independent agencies very fully, when they want to. In the American experience, when the independent agency is doing something nobody cares about, Congress pays it no attention. As soon as the agency starts to do something someone cares about, Congress pays a lot of attention and Congress gets its own way. The question in the E.U. is whether or not the Council, the Commission or the Parliament is in a position to exercise the kind of control over independent agencies that has existed in the United States and to decide whether or not that is a good thing. If it is not a good thing, I am fairly persuaded that simply saying that experts should be accountable to other experts is not a solution to the problem of control of experts in a democratic state.

The perhaps principle point is one of legitimacy. I disagree with Professor Majone and Mr. Amato in my assessment of how the world looks. Both are pretty confident that technocratic legitimacy can be substituted for democratic legitimacy, in some areas. I, however, am not very confident that you can do that in any area, and certainly not in very many. Indeed, it would appear that we are currently in a stage in which the people hate technocrats even more than they hate politicians. The Italian experience might be somewhat misleading, but I think it's very temporary in that. The existence of the Green Party itself, of the ecological movement, of the anti-technocratic themes in the last French general elections, and most importantly, the anti-technocratic themes after Maastricht as to "those Eurocrats in Brussels" illustrate this point. If the interest in independent agencies in Europe is not simply an attempt to tidy-up retrospectively the experience that has already been had, and I think if that was all that was going-on, this conference would not be being held, then we might not have to concern ourselves much with this anti-technocratic theme. But, I think that what's actually going-on in Europe in terms of interest in independent agencies is roughly the following. For those who wish the European Union to grow, it does not appear feasible at the moment to make the Commission grow. And if you cannot get the Commission to grow, then the way to make the European Union grow, is to plant European agencies all over the Union and see if you can get them to grow. If the independent agencies are a way of getting around the problem that "those Eurocrats in Brussels" face, not only a democratic deficit, but deficits of every

kind of popular support, then it seems to me to be a case of "out of the frying pan and into the fire". If the Commission cannot succeed in making itself legitimate by appeals to technical expertise, why should the independent agencies be able to make themselves legitimate by appeals to technical expertise? When we utter that terrible curse: "those Eurocrats in Brussels", first of all, what do we mean by "Brussels"? What is the derogatory character of the word "Brussels"? It may concern concentration, that what people do not want is the concentration of authority in Brussels. However, I believe that the fundamental derogatory element in "Brussels" is, to use a word used earlier by Mr. Rhodes, distance. It is not simply that the people of Europe do not want to be ruled by a concentrated power. More fundamentally, they do not want to be ruled by a distant power. Scattering the power among various distant places does not overcome the distance perception. Those Eurocrats in London or Lisbon are far farther away for most Europeans than are those in Brussels. How about the word "Eurocrats" in that expletive? The word "Eurocrats" is derogatory with regards to experts, rule by technicians, and technocratic government. It is not logical to suppose that legitimacy will be gained for the E.U. by emphasizing technocratic government in the form of independent agencies, when the problem is the rejection of technocratic government in the form of the Commission.

Finally, the words transparency and participation very often arise in discussions of the E.U., they are the fetish words of today. The independent agencies are highly participatory for experts. They are, therefore, also highly transparent to experts. However, the independent agencies are not transparent as far as non-expert populations are concerned. Indeed, they are remarkably non-transparent. First of all, the mere fragmentation into many agencies makes it difficult for the citizenry to follow what is happening. Secondly, and just as importantly, the very fact that these agencies defend what they do on the basis of expert legitimacy indicates that the population is being denied transparency. If the language is the language of experts, which cannot be understood by others, but is at the same time the very basis of claiming legitimacy, then the message certainly must be given to the general population that: "someone is telling me that I'm not supposed to understand and can't possibly understand what is going-on in government". Therefore, I believe that the further multiplication of independent agencies within the E.U. would only aggravate the problems of transparency and participation with which the E.U. is already greatly concerned. My tentative conclusion, and I stress its tentativeness, is that multiplying independent agencies, rather than seeking to expand the Union more directly, through growth in the Commission or Parliament or both, is an unwise idea.

Conference Synopsis

Alexander KREHER

The value and the importance of this Robert Schuman Centre conference were due not only to the various presentations by high-ranking practitioners and senior academics, but also to the discussions among the conference participants which followed each conference section. It is therefore the intention of the conference synopsis to disseminate the findings which came out of the various presentations and discussions.

The RSC conference on *The New European Agencies* focused on one type of Community agency, namely, bodies with their own legal personality, a certain degree of operational autonomy in performing specific tasks and which are not subject to the direction of one of the main Community institutions, and, furthermore, which are not foreseen explicitly in the EC Treaty. These EC agencies were established by the main Community institutions through the legislative decision-making process (unanimity in the Council after consultation with the EP).¹ Each particular establishing Regulation sets-out the tasks and internal and governing structure of each agency. Formally, these agencies can be distinguished from other Community bodies which are explicitly mentioned in the EC Treaty (such as the future European Central Bank), from internal bodies or decentralised departments of the Commission (such as the EU Statistical Office), and from European bodies which were created on an intergovernmental basis outside the Community legal framework (such as the European Patent Office in Munich or the European University Institute in Florence). The first two agencies of this kind were established at Community level as early as 1975, but it is only in recent years that the further eight EC agencies have actually been established. Five of these new EC agencies were the main subject of investigation of the Robert Schuman Centre conference.

¹ Article 235 EC Treaty is the legal base for almost all Council Regulations establishing an agency; only in the case of the European Environment Agency, Art. 130s EC-Treaty was used.

PART I: The Emergence of the EC Agencies and their Present Functions

1. Prehistory

Some of the issues to be addressed in an analysis of the formation of the five EC agencies included initial reasons for creating them, the actors who actually promoted them, and the duration of the legislative decision-making process to establish them. Informing this analysis was the larger question of whether the creation of the EC agencies was the result of piecemeal development or whether one can discover an overarching logic.

Indicators of an Incremental Creation Process

This part of the conference found that although the regulations² establishing the five agencies came into force during 1993 and 1994³, these establishment processes were not driven by central coordination within one of the main Community institutions, nor were the agencies seen within a broader context, for example, as an attempt to reform the institutional structure of the Community. The creation of each of the five agencies followed the same legislative procedure (consultation), but the actors involved, even if from the same EC institutions, were different in each case. The various proposals were advanced by different Commission Directorate Generals, discussed by the corresponding standing committees of the EP, and finally adopted by different Councils of Ministers.

The presentations showed that the original reasons for establishing the agencies varied (e.g. information deficits or need for coordinated reaction to external changes, such as recent political changes in Eastern and Central Europe and economic globalisation). The motives also reflected the demands of

² OJ L120 of 11 May 1990 for the European Environment Agency; OJ L131 of 23 May 1990 for the European Training Foundation; OJ L36 of 12 February 1993 for the European Monitoring Centre for Drugs and Drug Addiction; OJ L214 of 24 August 1993 for the European Agency for the Evaluation of Medicinal Products; OJ L11 of 14 January 1994 for the Office for Harmonisation in the Internal Market.

³ For the coming into force of each Council regulation, the decision on the location of each of these agencies was a precondition. The location of various Community bodies and institutions was handled as a package and the Office for Harmonisation was located even before the respective regulation was adopted by the Council. For the decision taken by common agreement between the representatives of the government of the Member States, meeting at head of state and government level, on the location of the seats of certain bodies and departments of the European Communities and of Europol, see OJ C 323 of 30 November 1993.

the respective policy areas of each of the agencies. In most cases, the various agencies had institutional or procedural forerunners. The forerunners included Technical Assistance Units (in the case of the European Training Foundation), the comitology system (two scientific committees⁴ in the case of the European Agency for the Evaluation of Medicinal Products), procedural mechanisms within the European Parliament⁵ and within the Commission (in the case of the European Monitoring Centre for Drugs and Drug Addiction), or Community programmes (the CORINE programme⁶ in the case of the European Environment Agency) or activities which were undertaken at an intergovernmental level.⁷

The idea of setting-up an agency was also promoted by various political actors, such as by former French President Mitterrand⁸ (in the case of the European Agency for Drugs and Drug Addiction) or the former President of the Commission Jacques Delors,⁹ (in the case of the European Environment Agency).

Moreover, the prehistory of the five EC agencies also varied in respect of the point in time when certain agencies were first proposed and the length of time it took from the Commission's proposal until adoption by the Council. With regards to the duration of the legislative decision-making process, it took, for example, in the case of the Office for Harmonisation, thirteen years - a first proposal was tabled by the Commission in 1980, but the Council regulation was not adopted until December 1993 - whereas it took only ten months in the case of the European Environment Agency (EEA) before the Council adopted the Commission proposal.

The European Parliament's attitude towards establishing EC agencies was positive, and the various standing committees of the EP always supported the idea of creating an agency and generally supported the extension of the agencies' tasks. Because of its purely consultative role in the legislative

⁴ Committee for Proprietary Medicinal Products (CPMP); Committee for Veterinary Medicinal Products (CVMP)

⁵ The European Parliament's special Committee of Inquiry into the Drug Problem in the Member States of the Community which was set-up in 1985.

⁶ CORINE (COoRdination de l'INformation sur l'Environnement) was an experimental project (1985-1990) to determine the need and methods for collecting and ensuring the consistency of information on the state of the environment and natural resources within the Community, see Council Decision 85/338/EEC, OJ L176 of 6 July 1985, p. 14.

⁷ The so-called Pompidou Group which was set-up in 1971, since incorporated into the Council of Europe.

⁸ On 3 October 1989, President Mitterrand sent a letter to his eleven fellow heads of state and government and to the President of the Commission, in which the first of seven priorities was "the setting up of a monitoring centre".

⁹ For President Delors' announcement in his speech to the European Parliament in January 1989, see *Bulletin EC* No. 2 1989, p. 9.

decision-making processes, the EP's proposed amendments have mostly been ignored by the Commission and Council. An exception was with the EEA, where the EP succeeded in ensuring that tasks that might potentially be adopted in the future were mentioned explicitly in the review article of the regulation establishing the EEA.

Thoughts about a Common Logic for the Creation of EC Agencies

Despite such evidence of a rather incremental establishment process, and repeated remarks during the conference that the agencies were created in answer to specific needs in various policy areas, arguments were presented concerning a possible overall explanation of the EC agencies. Professor Renaud Dehousse argued that the timing of the coming into force of the regulations points to an ex-post rationalisation. He argued that the establishment of EC agencies is a phenomenon which resulted from the political circumstances of the time, namely the Single Market project and its accompanying circumstances and the transformation processes in Eastern Europe. He stressed that the Single Market project is achieved not only through the adoption of over 300 regulations. It also requires that the regulations be implemented, which necessitates a means by which to ensure uniform implementation and, at the same time, to retain the decentralised model for implementation. The creation of bodies on the Community level which are supposed to ensure cooperation among national administrations might be seen as a means to achieve this end.

Professor Giandomenico Majone's opening paper also contains a rather general explanation for the establishment of EC agencies. According to Majone, their creation is due to the changing nature of policy-making at supranational level. Majone argues that the nature of today's policy-making at national and Community levels demands credibility rather than traditional coercive means. The changing nature of Community policy-making asks for cooperation and compliance not only among the member states of the Community, but also between member states and the Community institutions. Therefore, he describes the establishment of EC agencies as a common understanding among the main political actors of the Community and asserts that these new agencies are one answer to the increased need for policy credibility.

2. Launching the Agencies

It was shown that the 1993 European Council decision on the location of the seats of the agencies did not mean that the agencies were to be fully operational immediately. Rather, this marked the starting point for the

respective management boards to meet and start drafting a personal profile for the heads of their agency. Upon appointment by the management board, or, in the case of the Office for Harmonisation, nomination by the Council, most directors had to start from scratch, i.e. to select a suitable building and set-up a team of collaborators. The agency directors in Copenhagen, Lisbon, London and Turin were able to rely upon work done by institutional and/or procedural forerunners, such as the European Environment Agency Task Force, European Plans to combat drugs, the two scientific committees for proprietary and veterinary medicinal products, and the TEMPUS Technical Assistance Office. The heads of agencies described the present stage of each of their various agencies by focusing on issues such as governing structure, personnel, financial affairs and functional orientation.

Organisational and Governing Structure

Although the heads of the agencies generally enjoy operational autonomy in running their respective agencies, the founding regulations provide, in most cases, for a tripartite structure (management board,¹⁰ scientific committee,¹¹ and director¹²).¹³ The presentations by the heads of agencies showed that the management boards and scientific committees are provided with different tasks in different agencies and that they also vary in institutional design. All five agencies are governed by a management board composed of representatives of the Member States and the Commission. The EP additionally designates "two scientific personalities particularly qualified in the respective field" to the management board in the cases of the European Environment Agency, the European Monitoring Centre for Drugs and Drug Addiction, and the European Agency for the Evaluation of Medicinal Products. One Member State representative chairs the management board, with the exception of the European Training Foundation, where a representative from the Commission is chair.

The scope of the tasks of scientific committees within the agencies differ. They are also of differing sizes, but members of all agencies' scientific committee(s) are experts in the respective fields of the agencies. These experts are appointed by the agency's management board. The head of the agency is the legal representative of the agency and is usually appointed for a five-year period, renewable by the management board following a proposal by the Commission. An exception is the procedure for appointment of the Presidents and Vice-

¹⁰ Sometimes called "Administrative Board" or "Governing Board".

¹¹ Sometimes called "Advisory Forum".

¹² Sometimes called "Executive Director" or "President".

¹³ The Office for Harmonisation has a "budget committee".

Presidents of the Office for Harmonisation, who are appointed by the Council from a list of candidates prepared by the administrative board of the Office.

Personnel

Since the heads of agencies are the recruitment authorities, their recruiting procedures vary. Additionally, the presentations by the heads of agencies showed that the majority of persons on the agencies' lists of posts have the status of temporary staff, to whom the same conditions of employment apply as to other employees of the Community.¹⁴ Only the Agency for the Evaluation of Medicinal Products provides no permanent posts at all, whereas other agencies do provide permanent posts at least in administration and personnel. The five agencies differ in size. In 1995, the five agencies were comprised of the following posts: 22 employees in the Lisbon agency, 47 in Copenhagen, 67 in London, 81 in Alicante, and 130 in Torino. In addition, budgetary provisions have been made in all cases for a number of auxiliary and interim staff. Commission services are responsible for the insurance and pensions of most agency staff.

Financial Affairs

With regard to financial affairs, the presentations referred to the amounts and sources of revenue, provisions for the establishment and implementation of the budget, and financial controls. The general Community budget for the financial year 1996 foresees 6.3 million ECU for the European Monitoring Centre for Drugs and Drug Addiction, 14.58 million ECU for the Office for Harmonisation, 14.5 million for the European Environment Agency, 16.5 million ECU for the European Training Foundation and 14 million ECU for the European Agency for the Evaluation of Medicinal Products. The expenses of the five agencies are initially covered by the Community. After this initial period, agency revenue will come in varying degrees from two major sources: first, a subsidy from the Community, which is entered into the general budget of the EC, and, secondly, through payments (e.g. fees) for services provided by the agencies. Two agencies, the Office for Harmonisation and the European Agency for the Evaluation of Medicinal Products, aim to achieve financial self-sufficiency in the future.

¹⁴ It has proven to be an advantage for agencies to hire employees familiar with EC procedures (budget, personnel) because the agencies have to apply the Community "Financial Regulation" and their staff are subject to the Staff Regulations of officials of the European Communities, the Conditions of Employment of other servants of the European Communities, and the rules adopted by agreement between the Institutions of the European Communities.

As provided for in the Council regulations on establishing an agency, the agencies' management boards or budget committee adopted the financial rules of each respective agency after consultation with the Court of Auditors and the Commission. With regard to financial control, it was shown that each agency is subject to external control by the European Court of Auditors, whereas the appointment of the internal controller is provided for differently in the establishment regulation for each agency. Some regulations provide that the internal controller must come from the Commission (in the case of the European Training Foundation and the Monitoring Centre for Drugs and Drug Addiction), others provide that the internal financial controller is to be appointed by the agency's own management board or budget committee (in the case of the Agency for the Evaluation of Medicinal Products, the Office for Harmonisation and the Environment Agency).

Functions

In order to attain a clear understanding of the functions of the new EC agencies, it is important to be aware of the kinds of aims and tasks that are provided by the regulations establishing the agencies. The presentations' subsequent discussions showed that there was considerable variety, not only in structural characteristics, but also with regard to the functions of the agencies. Presentations made by the heads of the different agencies showed that each agency performs various functions, some of which are common to all and others of which are performed uniquely by that particular agency. All five agencies are to ensure dialogue with, and between, national experts from Member States, as well as third countries and international organisations, through the establishment and management of networks. Furthermore, all five agencies are supposed to collect, produce and exchange information on their respective policy issues. They must provide this information to Community institutions, to regional, national and international organisations, as well as to the public.

In addition to these common tasks, all five agencies fulfill specific tasks. The European Agency for the Evaluation of Medicinal Products, for example, provides scientific expertise, through one of its two scientific committees which meet in the agency, to a regulatory committee of the Commission. On the basis of this advice, the European Commission gives or refuses authorisation to new medicinal products. The European Training Foundation provides technical assistance in the field of higher education and for the reform of vocational systems in Eastern and Central European countries. The Office for Harmonisation decides whether or not an application will be accepted to grant a European Trade Mark. The European Environment Agency and the European Monitoring Centre for Drugs and Drug Addiction are supposed to improve the

comparability of already existing data by establishing common criteria to ensure greater uniformity in measurement methods.

Thus, although the EC agencies are supposed to fulfill various functions, such as management, information and advice provision, mediation, arbitration, administration, service-provision and/or adjudicative functions, we see that, at present, all of the EC agencies are far from US-style agencies, such as the US Environmental Protection Agency or the US Food and Drug Administration. These bodies have been given considerable regulatory decision-making powers which their European counterparts have not.

3. Reflections on the New EC Agencies by Representatives of the Main Institutions

The RSC also invited representatives of the main Community institutions to the conference with the intention of discovering their general attitude towards the establishment of EC agencies and learning about their experiences with them thus far. The representatives of the Council, Commission and European Parliament started their presentations by underlining the enormous work that has been done during the process of launching the agencies. The functional differentiation among the five EC agencies proposed by Mr. Ahrendt was not shared by all five heads of agency. Furthermore, all three representatives of the main Community institutions stressed in their presentations that they were taking into account the specificities of the agencies, but at the same time, the agencies have to comply with established Community procedures. In particular, the strict application of both the financial regulation and the personnel statute was a matter of discussion.

Although there may have been disagreements over the agencies functioning within the respective policy Directorates General of the Commission or EP standing committees, disagreements with various horizontal divisions of the Commission or EP (concerned with personnel, budget, and budget control) seemed to be more prominent during the agencies' first year of existence. However, discussions showed that various efforts have been made to ensure that these will be tackled. The area of budgetary affairs served as one such example. In 1995, budget negotiations concerning the agencies' budgets for the financial year 1996 ran into problems and the EP budget committee put agency money on reserve, i.e. this money was to be available only after the EP's budget committee had released it. Mr. Brinkhorst admits in his contribution that this procedure causes problems for the agencies. He stresses that this move was prompted by the agencies' financial behavior but that it also served the EP's desire to strike back against the Commission and the Council for having allowed differences between the various agencies, for example,

concerning the discharge procedure or the permissible origin of the agencies' financial controller.

PART II: National Experiences with Agencies - Lessons for the New European Agencies?

This part of the conference was dedicated to experiences with agencies in Italy, the United States, the United Kingdom and Germany and aimed to discover the motivations for these states to establish agencies. It also sought to reveal how the establishment of agencies might advance the European venture and speakers were further asked to address problems that might potentially arise after their establishment.

Professor Guiliano Amato highlighted the fact that even during the various waves of agency creation in Italy, every agency had its own unique development, distinct from the others and, due to this, he claimed, that an overall explanation rationalising this development can be done only *ex post facto*. He argues that the reasons behind the creation of agencies varied in Italy. With regard to the role of some new Italian agencies, he shows that they exercise powers and functions that did not exist before the creation of these agencies.

In focusing on executive agencies in Britain, Professor Rod Rhodes showed that the so-called "next-step agencies", established in the late 1980's with the aim of carrying-out efficient operational management, were given functions previously carried-out by central departments and that the conferring of new tasks was not seen to occur in the UK in relation to these agencies. The UK government's motivation for establishing these agencies was driven by an *ex ante* rationale, namely establishment within the framework of general administrative reforms and in an attempt to create private sector management in the public sector (i.e. their creation based on strategic planning). This was another point of difference between the reasoning behind agency creation in the UK versus the European Community approach. On the other hand, Rhodes shows that the next-step agencies do vary, like the EC agencies, with regard to funding and accounting arrangements.

In discussing the various types of US agencies (regulatory, administrative, executive, etc.) and the different reasons for their creation, Professor Martin Shapiro pointed-out that their institutional design was driven by one common rationale, namely, to prevent one of the two political parties from taking them over. In general M. Shapiro presented a rather pessimistic assessment of the independent or semi-independent agencies in the US and, perhaps due to this pessimism, he was particularly skeptical about the co-ordination of EC agencies if their numbers are going to increase.

In his presentation on the German Federal Environment Agency, Heinrich von Lersner underlined the advantages of an information-providing agency composed mostly of scientific experts rather than administrators and stresses that such an agency must be economically and politically independent when publishing data. By looking comparatively at both the European and the German Environment Agencies, he highlights similarities in functional terms (information function), while showing, at the same time, their differences in governing structure. While the EEA is governed by its management board, the German agency is a decentralised body of the Federal Environment Ministry. Based on his experience as the former UBA chairman, and former member of the EEA's management board from its inception, he sees the members of parliament (national and EP) as well as the public as important clients for information-providing agencies and, furthermore, depicted a positive future for the EEA.

Interestingly, the speakers in this part of the conference came to different conclusions regarding the existence of EC agencies. The speakers who focused on the UK and the US were rather pessimistic about the new EC agencies, whereas G. Amato and H. von Lersner focused more on their advantages, not only for the Community itself, but also for the Member States. In particular, the contributions by Rhodes and Shapiro argued that the establishment of agencies in the US and UK violated the principle of accountability.

In the discussions following the presentations, it became evident that the concepts of accountability, credibility, etc. are related to the various traditions of parliamentary states. It was argued by some conference participants that it is not particularly helpful to simply try to apply concepts developed in specific national contexts to the Community system. It was suggested that it would be better, instead, to begin with the political system of the EC at its present stage, which is often characterised by low visibility, low politicisation and indirect accountability. Given these Community characteristics, the establishment of EC agencies, in the views of some conference participants, is a clear step towards improving the present situation. The agencies will trigger debates which did not exist prior to their establishment and they will be more transparent than the present comitology system. It was G. Majone who emphasised the need for a concept of accountability adapted to the structures and needs of the EC that would also be applicable to EC agencies. He suggests adding a new category, the so-called professional accountability, to the two traditional understandings of accountability, i.e. financial and political accountability, which are linked to control by people directly accountable to the electorate.

Part III: Future Prospects for the European Agencies

After having learned about the agencies' similarities and differences and about experiences with agencies within states, the third part of the conference was dedicated to the EC agencies' future prospects. All the heads of agency first remarked that their first priority is to become fully operational, not only as an institution but also to ensure cooperation within the networks which each must launch and manage. It was generally agreed that in order to achieve their various objectives and in their particular structure, the new EC agencies have to be credible, not just in the eyes of the main Community institutions, but also in the eyes of various other clients, such as industry, national administrations, political parties and the public in general. In order to build-up a good reputation, it is necessary to withstand interference in day-to-day procedures by the main EC institutions and representatives of the member states within the management boards. It was mentioned as well that a high level of credibility of EC agencies is also in the interest of the main institutions, using agencies' expertise as the grounds for decision-making.

The fact that the networks the agencies are supposed to establish and co-ordinate is one of the key factors for the success of most of these agencies is underlined in Professor Karl-Heinz Ladeur's contribution focusing on the European Environment Agency.¹⁵ However, his findings can equally be applied to other EC agencies. He conceives of the network approach as a kind of dynamic, self-transforming interrelationship with knowledge-generating potential. Therefore, the networks are more than "just" a form of co-operation and co-ordination which ensures an exchange of information. One of the network approach advantages is that network participants, who are national experts with a high level of professionalisation in the respective area, have the possibility to model and develop in co-operation exactly how each agency's aims and tasks can be fulfilled in spite of or as a consequence of different approaches within the member states' administration. Furthermore, it was argued that the creation of these supra-national networks further complies with the subsidiarity principle.

Moreover, the agency networking might be useful in light of forthcoming association or accession agreements as well as with regard to Community cooperation as such. The establishing regulations explicitly provide for the possibility to include non-member countries and international organisations in the agencies' network. So, the agencies' networking with administrations in the non-member states might be seen as a supplement to the work already conducted by interparliamentary delegations of the European Parliament which

¹⁵ See footnote 1.

look at matters affecting relations between the EU and non-EU countries. The latter relations can be supported or gain additional benefits from cooperation on the administrative side.

One of the main issues for future development was the question of whether or not the EC agencies should be entrusted with additional powers. This question has to be addressed in light of the forthcoming review of the Establishing Regulations. It is well known that within the European Parliament's standing committees there were voices that wanted to confer monitoring, implementation and inspectorate powers on the agencies. Therefore many of the conference participants were impressed that both the directors of the European Environment Agency and the European Monitoring Centre for Drugs and Drug Addiction were emphatic that they did not want to take-on further tasks, such as inspectorate power, with the forthcoming review of the agencies' tasks in 1996 and 1997.

Apart from the issue of whether or not to grant new powers to the agencies, a lot of discussion time was dedicated to the question of what impacts the EC agencies will have, with their present tasks, on the main Community institutions as well as on the member states. It was generally agreed that, although the agencies are not involved in the formal policy decision process, their work will certainly contribute to political initiatives as well as to ensuring the implementation of EC legislation by member states. The agencies will provide new information and this information may be used by the main policy-making actors (the main institutions) in the policy-formulation process. The European Environment Agency's Report on the Review on the Fifth Environmental Action Programme¹⁶ and the European Monitoring Center for Drugs and Drug Addiction's Background Report for the Summit in Madrid are just two examples of this. Therefore, the agencies will lessen the tendency to burden the main Community institutions with multiple, and sometimes even inconsistent, objectives. Additionally, it was argued that the existence of the new EC agencies may serve as an impetus for reorganising structures and procedures which have become politicised, and, therefore, might also be helpful in inducing or accelerating various ongoing discussions with regard to the Community's financial, personnel and administrative procedures.

The existence and development of the agencies certainly has implications for national administrative systems in the respective policy areas. The member states are obliged to establish national focal points which co-ordinate the

¹⁶ European Environment Agency: *Environment in the European Union 1995 - Report for the Review of the Fifth Environmental Action Programme*; Copenhagen 1995.

preparation and transmission of the information needed to the respective agency. Apart from the need to have a certain administrative structure, the EC agency approach ensures that the national experts will meet within the agency on a regular basis. Organised networking by the agencies could "europeanize" the national experts coming to the agencies, who will then, in light of commonly agreed standards or information deficits at Community level, force or re-organise their national systems, if necessary, to deliver needed information, based on the same measures and standards. The existence of the European Monitoring Centre for Drugs and Drug Addiction, as described by Georges Estievenart, even influenced the establishment of an independent agency in France in this area. In the cases of the Office for Harmonisation and the European Agency for the Evaluation of New Medicinal Products, national authorities will certainly face competition in the near future. Both agencies deliver services to industry, allowing industry to decide whether to go to the national authorities or directly to European level, which can provide authorisation for the Community market as a whole.

If we describe the European Union as a system of multi-level governance, it can be argued that the establishment of new EC agencies within the political system might reflect a change in the pattern of EC governance. In comparison to former Community approaches, such as harmonisation and mutual recognition, the EC agency approach creates institutionalised interaction between experts from member states, third countries and international organisations within the confines of an agency. The agency approach does not change the division of powers within the Community. It is still the Council which makes the final decision on the establishing legislation which provides the aims and tasks of the respective agencies and representatives of member states are represented on the management boards of the agencies.

The conference has found that the major element of the changes in pattern of EC policy is the establishment and management of networks in a formal structure (agency) within a policy area. This involves the formulation of rules which, to date, have remained informal, as well as ensuring the implementation of new Community approaches. The result of this change will be a structured co-operative and sometimes conflict-ridden collaboration among national and international experts that produces expertise to be used by various political actors for policy-formulation, policy-evaluation and the management and implementation of Community programmes and procedures. In comparison to the functional alternatives, such as the EC consultancy system, national or international procedures, the EC agency approach will promote greater transparency and could, therefore, increase the credibility of Community policy in the areas which they address.

Concluding Remarks

Alexander KREHER

Through the examination of the creation and the first steps of five of the new EC agencies, the Robert Schuman Centre conference has attempted to enrich understanding of EC agencies in general. Considering and discussing experiences of various agencies on a national level has shown the different motivations for establishment which can exist and has demonstrated that no state strategy can provide a suitable framework for reference and analysis of EC agencies. The conference underlined the need to start any analysis of the development of EC agencies within the framework of the particular characteristics of the Community's political system.

If we describe the European Union as a system of multi-level governance, it can be argued that the establishment of new EC agencies within this political system might reflect a change in the pattern of EC governance. In comparison to former Community approaches, such as harmonisation and mutual recognition, the EC agency approach ensures institutionalised interaction between experts from member states, third countries and international organisations within the confines of an agency. The agency approach does not change the division of powers within the Community. It is still the Council which makes the final decision on the establishing regulations which provide the aims and tasks of the respective agencies and representatives of member states are represented on the management boards of the agencies.

The conference has found that the main element of the change in pattern of EC policy is the establishment and management of networks in a formal structure (agency) within a policy area. This ensures the fulfilment of tasks which, to date, have remained undone, as well as ensuring the implementation of new Community approaches. The result of this change will be a sometimes co-operative and sometimes conflict-ridden collaboration among national and international experts that produce expertise to be used by various political actors for policy-formulation, policy-evaluation and the management and implementation of Community programmes and procedures. In comparison to its functional alternatives, such as the EC comitology system, national or international procedures, the EC agency approach will provide greater transparency and could, therefore, increase the credibility of Community policy in the areas which they address.

While the agency approach provides clear opportunities for the development of EC regulatory policy-making and for European integration as a whole, it must also be acknowledged that this form of governance, in the sense of changing patterns of fulfilment of tasks, has various preconditions for success. At the outset, the creation and guarantee of an agency's credibility is probably the most important, but agencies' credibility depends on the reputation of the participants and their commitment to problem-solving and political independence. Moreover, it is important that the EC agencies are able to enjoy sufficient autonomy (financial, administrative, political) and to resist pressures from interest groups and member states, as well as from the main EC institutions, in their day-to-day management.

Should the agencies, which at present mostly provide information and services, be entrusted with further tasks, such as the power of formal decision-making or inspectorate powers, as demanded, for example, by sectors of the EP and also provided for in the Commission's proposal for establishing a European Agency for Veterinary and Phytosanitary Inspection¹? Any answer concerning this issue certainly requires further discussion. The conference has shown not only that such reasoning should take into account the functional logic of the EC agencies and their political context, but also the perception that the present heads of agencies do not behave as budget maximisers, eager to get more power, as suggested in some literature about bureaucracies. Issues such as standardised recruitment and promotion procedures, standardised financial regulations, internal financial control or potential transfer and promotion across agencies and other Community institutions are but a few examples which must be discussed from a functional point of view and all participating actors should work to ensure that these issues do not become politicised.

Knowledge about EC agencies and the recognition of their European specificity is not only valuable *per se*, but also illuminates the discussions on reform of the Community's institutional setting. The EC agency topic is, thus, an important constituent of further discussions not only on EU institutions and bodies but also in the on-going debate about the changes within the administrative systems of member states.² Such an understanding may also inform debate on the wider field of EU regulatory policy-making characteristics and approaches to ensuring active co-operation during the various phases of the

¹ See COM(96) 223 final from 29.05.1996.

² See Schwarze, Jürgen: (Hrsg.): *Das Verwaltungsrecht unter europäischem Einfluß - Zur Konvergenz der mitgliedstaatlichen Verwaltungsrechtsordnungen in der Europäischen Union*. Baden-Baden 1996

policy cycle (information-gathering; policy-formulation, decision-making; implementation, evaluation). The Robert Schuman Centre will certainly continue, as it has begun, to accompany the development of EC agencies in a spirit of dialogue among researchers and practitioners.

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The New European Agencies

Programme of the RSC Conference
European University Institute (EUI), Florence
1-2 March 1996 (Badia Fiesolana, Theatre)

Friday, 1 March 1995

8.15 Bus transfer from the Hotel to the European University Institute

9.00 Welcome address by **Professor Patrick Masterson**,
President of the European University Institute (EUI)

Opening Paper

9.15 **Professor Giandomenico Majone**, External Professor at the EUI
New Agencies in the EC: "Regulation by Information"

**Part I: The Emergence of the EC Agencies and their Functioning:
Original Idea - Decision to Establish - Experiences After the
First Steps**

Chair: Professor Giandomenico Majone

9.45 **Georges Estievenart**, Director
European Monitoring Centre for Drugs and Drug Addiction

10.05 **Fernand Sauer**, Executive Director
European Agency for the Evaluation of Medicinal Products

10.25 **Peter De Rooij**, Director
European Training Foundation

10.45 **Discussion**

- 11.45 Drink at the Villa Schifanoia with Commissioner Emma Bonino
- 12.30 Lunch break (Badia Fiesolana, Sala rossa)
- 14.00 **Domingo Jimenez-Beltran**, Executive Director
European Environment Agency
- 14.20 **Jean-Claude Combaldieu**, President
Office for Harmonisation in the Internal Market

Statements by Representatives of the EU Institutions

- 14.40 **Niels Ahrendt**, Head of Division,
Secretariat General, European Commission
- 15.00 **Antonio Sacchetti**, Legal Service of the Council
- 15.20 Discussion
- 16.15 Coffee Break

Part II: National Experiences with Agencies - Lessons for the New European Agencies (16.30-18.30)

- Chair:** **Professor Carol Harlow**, London School of Economics
Introduction: *The Relevance of State Experience to the EC*
- 16.30 **Giuliano Amato**, Visiting Professor at the EUI;
Presidente, Autorità Garante della Concorrenza e del Mercato
Italy
- 16.50 **Heinrich von Lersner**, former President,
German Federal Environment Agency
Germany
- 17.10 **Rod A.W. Rhodes**, Professor, University of Newcastle
UK

- 17.30 **Martin Shapiro**, Professor, School of Law, University of California
USA
- 17.50 Summary by **Professor Carol Harlow** followed by a General Discussion
- 18.30 Bus transfer to the Hotel
- 20.30 Dinner in Florence

Saturday, 2 March 1996

Part III: Future Prospects

- 9.00 **Professor Yves Mény**, Director of the Robert Schuman Centre, EUI
Opening Remarks
- 9.15 **Professor Renaud Dehousse**, EUI
Independent Agencies in the EC - Some General Reflections
- 9.35 **Professor Karl-Heinz Ladeur**, EUI
Perspectives on Networks for Public Administrations in Europe and the Role of EC Agencies
- 10.00 **Laurens Jan Brinkhorst**, MEP, General Rapporteur of the 1997 Budget
The Future of European Agencies: A Budgetary Perspective from the European Parliament
- 10.30 Discussion
- 11.00 Coffee Break
- 11.15 **Round Table - The Future of the European Agencies**
"The Agencies in the Next Decade"
Opening Statements by the Directors of the Agencies and the Representatives of the EU Institutions

Concluding Remarks by **Professor Giandomenico Majone**

- 12.30 Lunch
- 14.30 Bus transfer to Florence



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